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No. 865

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

LESLIE BROWN, BERNARD WEISS, ALBERT WOHL, INDIVIDUALLY AND AS A PARTNERSHIP,
Petitioners,

vs.

THE UNAUTHORIZED PRACTICE OF LAW COMMITTEE OF CUYAHOGA COUNTY, OHIO,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO

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Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners, Leslie Brown, Bernard Weiss and Albert Wohl, individually and as a partnership, respectfully pray that a writ of certiorari be issued to review the judgment of the Supreme Court of the State of Ohio, entered in this case, affirming a judgment of the Court of Appeals of Ohio, Eighth Judicial District (Cuyahoga County), which affirmed a judgment and decree of the Court of Common Pleas of Cuyahoga County, Ohio. Said judgment and decree of said trial court restrained and enjoined said petitioners from engaging in the representation of claimants before the administrative agencies of the State of Ohio, created by and serving the purposes of the Workmen's Compensation laws, and constitutional provision of the State of Ohio, and assessed costs of the proceedings against said petitioners.

THE OPINIONS BELOW

The judgment and decree of the Court of Common Pleas of Cuyahoga County, Ohio in this case, No. 722,206 in said Court, is set out in the Appendix hereto by the Finding of Facts and Conclusions of Law of said Court, filed June 29, 1962, at page 24 of the Appendix, and by the judgment and decree of said Court at page 33 of the Appendix. Neither is reported.

The opinion of the Court of Appeals of Ohio, Eighth Judicial District (Cuyahoga County) is unreported. Said opinion, dated November 10, 1962, is set out at pages 44 of the Appendix hereto. Said opinion is dated November 10, 1962.

The majority opinion of the Supreme Court of Ohio is reported at 175 O. S. 149, 192 N. E. 2d 54. Said opinion, dated July 10, 1963, has been set out at pages 58 of the Appendix hereto.

The order of the Supreme Court of Ohio which denied application for rehearing, dated September 25, 1963, is unreported. Said order has been set out at page 67 of the Appendix hereto.

STATEMENT OF THE GROUNDS UPON WHICH THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES IS INVOKED

The judgment of the Supreme Court of the State of Ohio, review of which is sought, is dated July 10, 1963, which is the date of entry of said judgment. Application for rehearing of said judgment was duly filed within the time allowed therefor, was denied by order of the Supreme Court of the State of Ohio, which was made and entered on September 25, 1963.

On December 19, 1963, an order was made and entered in the Supreme Court of the United States by which the time within which to file a petition for a writ of certiorari in this cause was extended to and including January 30, 1964. On January 29, 1964, an order was made and entered in the Supreme Court of the United States whereby the time within which to file a petition for a writ of certiorari in this cause was further extended to and including February 21, 1964.

Jurisdiction of the Supreme Court of the United States to review said judgment of the Supreme Court of the State of Ohio by writ of certiorari is conferred by Section 1257 (3) of Title 28 of the United States Code.

STATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW

1. Representation of claimants as a profit in the form of contingent fees by persons not admitted to the practice of law, having been engaged in by petitioners, could the legal profession determine, within constitutional limitations imposed by Section 1 of the Fourteenth Amendment to the Constitution of the United States, that said business activity constituted the practice of law, treat said business activity as the practice of law as of a date prior to the commencement of the proceedings by which it was sought to have said business activity determined to be the practice of law, and, by being engaged in by persons not admitted to the practice of law, the unauthorized practice of law?

2. Where a business activity has been engaged in by persons not admitted to the practice of law, has been both regulated and permitted for a period of years by the Industrial Commission of Ohio, can a judgment of a court of said State render said business activity an improper prac-

tice, wrongful and illegal, retrospectively, to apply to a time which antedates the judgment of said court?

3. Procedurally, can the legal profession, by a Court's Committee, directed by the Court to make inquiry into the unauthorized practice of law in Cuyahoga County, Ohio, commence and maintain a disciplinary proceeding against persons just admitted to the practice of law, but *sui juris*, in view of the limitations imposed by Section 1 of the Fourteenth Amendment to the Constitution of the United States?

4. Is not the institution and prosecution of disciplinary proceedings in which the relief obtained is an injunction and costs of said proceedings, the maintenance of a civil action under the provisions of Sections 2305.01 and 2307.01 of the Revised Code of the State of Ohio, which (a) requires in the complainant capacity to sue and (b) that notice of action be given as required by Sections 2703.01 and 2703.02 of the Revised Code of the State of Ohio?

5. In view of the provisions of Sections 4705.07, which defines, and 4705.99 (A) of the Revised Code of the State of Ohio, which makes a misdemeanor of, false representation of one's self as an attorney, if representation of claimants before the administrative agencies created by the Workmen's Compensation Laws of the State of Ohio is to be denied as the practice of law; is not the availability of the thoroughly adequate remedy at law of prosecution of offenders pursuant to said statutes a complete bar to resort to the more drastic remedy of injunctive relief; is not the interpretation given said last mentioned statutes an interpretation of statutes of the State which fails to satisfy requirements imposed by Section 1 of the Fourteenth Amendment to the Constitution of the United States?

6. Is not the adequate remedy at law of prosecution for the criminal offense of false representation of one's self

as an attorney a complete bar to disciplinary proceedings, whatever the relief thereby sought; is not the State Courts' interpretation of Sections 4705.07 and 4705.99 (A) of the Revised Code an interpretation contrary to the requirements of Section 1 of the Fourteenth Amendment to the Constitution of the United States?

7. Does not the judgment of the Supreme Court of the State of Ohio, review of which by writ of certiorari is hereby sought, rest upon, and present, an invidious distinction where there is no difference by said judgment's prohibition of representation of claimants by persons not admitted to the practice of law, if compensated by fees paid by such claimants, since said judgment is explicit in its approval of representation of claimants where the compensation is by a salaried representative, as an employee of a labor organization, or where the representation is of employers?

8. Where representation of others before the administrative agencies created by the Workmen's Compensation Laws of the State of Ohio has been so ordered, and provided for, by the Legislature of the State of Ohio that such representation has been open to persons not admitted to the practice of law, is the appropriation of that portion of the occupation aforesaid by persons not admitted to the practice of law of claimants for a fee to the practice of law by lawyers only by the judiciary of the State of Ohio an infringement of the judiciary upon the legislative and executive branches of the government of the State of Ohio which fails to meet the requirements of separation of powers, essential to a republican form of government, which, under the provisions of Section 4 of Article IV of the Constitution of the United States, must be annulled?

CONSTITUTIONAL PROVISIONS AND STATUTES HEREIN INVOLVED

Constitution of the United States

The Constitution of the United States	Appendix
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Section 4705.07 of the Revised Code	p. 72
Section 4705.99(A) of the Revised Code	p. 72

THE STATEMENT OF THE CASE

Three judges of the Common Pleas Court of Cuyahoga County, Ohio, with the approval of the Chairmen of the Committees on the Unauthorized Practice of Law of the Cleveland Bar Association and of the Cuyahoga County Bar Association, by entry dated April 18, 1959, appointed a committee of thirteen lawyers to inquire into the unauthorized practice of law in Cuyahoga County, Ohio. (Appendix, p. 30) On April 3, 1961, the said committee, respondent herein, commenced a disciplinary proceeding against

Brown, Weiss and Wohl, a partnership, and against Leslie Brown, Bernard, Weiss, Albert Wohl, Garcon Weiss, and Edward Ostrovsky, by which "Application for Restraining Order" it was alleged that those proceeded against were engaged in the practice of law, although not admitted to the practice of law. (Appendix, p. 19) The final order and judgment named only said Brown, said Weiss and said Wohl, individually and as a partnership, and it enjoined them from continuing the said practices, said to be the practice of law and fully set out in said entry of the said Common Pleas Court of Cuyahoga County, Ohio, and awarded costs of action attributable to the said Brown, said Weiss and said Wohl, individually and as a partnership. After successive affirmances by the reviewing courts of the State of Ohio, the judgment of the Supreme Court of the State of Ohio is sought to be reviewed by writ of certiorari.

Petitioners' business was that of the representation of claimants who seek to participate in the benefits of the State Insurance Fund created by the Workmen's Compensation Laws of the State of Ohio. Their compensation was in the form of fees paid them by the claimants for having presented such claims to the appropriate agencies, with the result that compensation was awarded such claimants.

The Workmen's Compensation system of Ohio is monopolistic and compulsory. The compensation awarded is standardized. 295,267 claims were filed in the year, 1961, and 310,395 in the year, 1960. Awards for disabilities which had resulted from casualties in each of the years since the inception of the system in 1912, which were paid during 1961, amounted to $68,849,217.00 for compensation, and $21,233,998.00 for medical services. Of the compensation figure above, 15.75 percent, or $10,844,750.00 was paid as compensation for injuries which had occurred in 1961, and 16.73 percent, or $11,515,527.00, was paid as compensation for

injuries which arose in 1960. The total assets of the Ohio State Insurance Fund, at the end of the calendar year, 1961, amounted to $460,521,725.00.

Employers pay into the State Insurance Fund the amounts assessed against each of them according to classification as to hazard of each type of business and according to the total payroll reported by each employer. Payments are made upon assessments determined at the end of each six months' period. In every contested claim, the adversaries are the claimant, or the employer, against the Fund. The Fund's interest is that only proper claims shall be paid, and this is a common interest shared by claimants, employers, whether resisting the claim or not, consumers of the products of industry and agriculture, and the government of the State. The only adversary character of a proceeding within the Workmen's Compensation System emerges when the claim, or the defense, is fraudulent or dishonest. This circumstance evaded presentation to the courts of the State of Ohio. Whether Workmen's Compensation claims are adversary in character was contended for, and against, without careful analysis. The result reached was that which the committee of lawyers sought, that persons not admitted to the practice of law should be excluded from the representation of claimants for compensation in the form of fees based upon the compensation won for them. Non-lawyers may perform, by the terms of the judgment of the Supreme Court of Ohio, the same services, if they are not compensated at all, if they are salaried, as are labor union representatives, and if they represent employers.

Since this petition for a writ of certiorari seeks to have reviewed a judgment of a state Court, the manners in which the federal questions here sought to be reviewed were raised, or preserved, are set out at this point.

1. Creation of the offense of the unauthorized practice of law as applied to a business activity by *ex parte* definition of said business activity as such practice of law was objected to by motion to dismiss proceedings filed in the Trial Court December 7, 1961. (Appendix, p. 23) The record does not show a decision upon said motion.

2. Objection to the retroactive effect of the judgment, review of which is sought, was made by motion to dismiss proceedings filed in the Trial Court December 7, 1961. (Appendix, p. 23) The record discloses no decision upon the said motion, except that the action proceeded.

3. Lack of capacity to sue, with the question of whether the legal profession may discipline persons who are *sui juris* and not of the legal profession, was raised by said motion to dismiss filed in the Trial Court December 7, 1961. The defect in this instance is of such character that it may be taken advantage of for the first time on appeal.

4. Lack of capacity to sue, coupled with failure to commence a civil action according to the law of the forum was objected to by said motion to dismiss, filed December 7, 1961.

5. Objection that the extraordinary relief of injunction was barred by the existence of an adequate remedy at law was raised by the said motion to dismiss.

6. Objection that disciplinary proceedings were not available to respondent herein, in view of the adequate remedy at law, which was available was made by the said motion to dismiss proceedings.

7. Objection that an invidious distinction was made of petitioners as non-lawyers who represent claimants before the administrative agencies existing by virtue of the Workmen's Compensation Laws of Ohio, as against salaried non-lawyers who represent claimants, and non-lawyers who represent employers before such agencies, the distinction

of approving such representation in the latter two cases, and making such representation of others the offense of the unauthorized practice of law in the first case, or classification, having occurred for the first time in the said judgment of the Supreme Court of the State of Ohio, was duly taken by said application for rehearing, filed in the said Supreme Court of the State of Ohio, July 24, 1963. Said objection was denied by the said order of the Said Supreme Court of the State of Ohio, which denied said application for rehearing dated September 25, 1963.

8. Objection that the entire procedure constituted an infringement by the Judiciary of the State of Ohio upon the domains of the Legislature and of the Executive branch of the government of said State was made by said motion to dismiss filed December 7, 1961. (Appendix, p. 23) Said motion was not ruled upon, but the action proceeded to judgment, and was twice affirmed upon appeal.

ARGUMENT

The Ohio Workmen's Compensation Law is social legislation, the purpose of which is to assure workmen who may be injured or killed, or disabled by occupational disease, swift, adequate and certain compensation for time lost and immediate and adequate medical services and care, and that the same should be a charge upon industry. *Industrial Commission* v. *Gintert*, 128 O. S. 129, 190 N. E. 400; *Adkins* v. *Staker*, 130 O. S. 198, 198 N. E. 575. As shown hereinabove new claims for compensation approximate 300,000 per year throughout the State of Ohio. A pamphlet of the Institute of Judicial Administration, New York University, dated July 17, 1961, shows that in the Common Pleas Court of Cuyahoga County, Ohio, the "at issue to trial" interval is 26 months, while the figures given above show that in 1961, of $68,849,217.00 paid as compensation, 15.75 percent, or $10,844,750.00, was paid upon injuries which had occurred in that same year, or applied for in that year, not 26 months later, as, to take the extreme view, certainly would have been the case, if the State of Ohio had not met this situation 52 years ago by the removal of Workmen's Compensation matters from consideration in the Courts of Ohio and the many delays of actual litigation. There is now a single, thoroughly adequate State Insurance Fund, standardized awards which are swiftly determined and paid. It is submitted, though these facts are not given, that of $21,233,998.00 paid in 1961 for medical services, an amount near that of 15.75 percent upon injuries, or applications, in 1961, or approximately $3,344,384.68 was paid in 1961 upon current claims for medical care and services. A course that would be likely to delay or postpone medical care and services, or cause the same to be reluctantly given rather than promptly and fully after injury, or discovery of occupational disease, cannot be lightly adopted.

The judgment of the Supreme Court of the State of Ohio shows that the respondent succeeded in removing from the practice before the Workmen's Compensation agencies of the State of Ohio those non-lawyers whose business activity would be made available to exploitation by claimants', or "negligence" lawyers. It is submitted that, swiftly though Workmen's Compensation claims may have been disposed of heretofore, the restriction of representation of claimants for a fee before such agencies to lawyers only undoubtedly would tend greatly to increase the interval from injury and application for compensation to fruition by payment for medical care and compensation to the grievous detriment of the workmen disabled through injury or occupational disease, or of workmen's dependents where death ensued.

While the matter is one for the State to determine justly and wisely, or otherwise, if in the State's determination, limitations imposed by the Constitution of the United States have been exceeded, the remedy of review by writ of certiorari is certainly available.

The further suggestion is offered that, in some quarters, compensation to injured workmen is regarded as one more form of relief to those who prefer not to work, the premiums as another kind of taxation of industry for the support of relief. In such quarters, the end of stamping out that which is viewed as relief and as taxation may justify resort to fairly drastic, perhaps irregular, and certainly unconstitutional, means and methods.

Usage, custom over the 52 years of the existence of Ohio's Workmen's Compensation system has responded in no way whatever in support of the drastic change wrought by the judgment review of which is sought. Removal of non-lawyers from the practice of representation of claimants, if for a fee, such non-lawyers' specialty, will affect this bit of social legislation most adversely, for its administration

thereby will be deprived largely of its essential characteristics of volume and dispatch. Thereby will be reduced greatly the amounts paid as compensation, the amounts paid for medical care and the speed with which both are paid, and the premiums assessed against employers will similarly be reduced.

I.

The Unauthorized Practice of Law Committee made a determination entirely on its own that the representation of claimants before Workmen's Compensation agencies was the practice of law. The Committee investigated and arrived at the conclusion it had already determined upon. If the practice of law, it followed that when done or performed by persons not admitted to the practice of law, the activity was the unauthorized practice of law. It is abundantly apparent from the pleadings and the findings of facts and conclusion of law (Appendix, p. 19 and p. 24, respectively) that the Committee, and the Trial Court as well, began with the proposition that the said representation was the practice of law, and ended with that as the result, with no intervening analysis of whether such representation before non-judicial, if quasi-judicial, agencies was the practice of law beyond the similarity of a fee contingent upon the recovery and the presentation of a claim for money and medical services. Can it be that lawyers who are principally so-called "negligence" lawyers or claimants' lawyers actually see the two as one? In any event the respondent thus led itself into the error of logic that petitioners were so far "trespassers" upon the legal, lawyers' domain that they could be disciplined as if they had been members of the legal profession, which, it is clear petitioners are not. But they are citizens of the United States and of the State of Ohio, and they are entitled to the traditional safeguards, privileges and immunities, so well known to attach to all Americans. Whether the repre-

sentation in question was the practice of law was a question of fact, one to be found as a fact upon trial of the issues of fact. By defini- (?) there was in this action or proceeding, no inquiry into nor examination of the principal matter of fact in issue.

Carpenter v. Winn, 221 U. S. 553, 55 L. Ed. 842, 31 S. Ct. 683.

Coupled with the result reached of denial to petitioners of their rights to earn a livelihood by means not shown to have been unlawful, unless the determinations of the Trial Court, and of the reviewing courts, are to be given retroactive effect, there occurred hereby an unconstitutional denial of due process of law.

Adams v. Tanner, 244 U.S. 590, 61 L. Ed. 1336, 37 S. Ct. 662;

Schware v. Board of Bar Examiners of the State of New Mexico, 353 U. S. 232, 1 L. Ed. 2d 796, 77 S. Ct. 752;

New State Ice Cream Co. v. Liebeman, 285 U. S. 262, 76 L. Ed. 747, 52 S. Ct. 371.

II.

The legal profession has no right or authority whereby it may discipline persons not admitted to the practice of law. The right to discipline lawyers as members of the Bar of the State of Ohio is unquestioned. The authority to punish for contempt of court is a power inherent in every court of the State, without question, for misconduct "such as tends to bring the administration of the law into disrespect and disregard or interferes with or prejudices parties litigant or their witnesses during litigation."

General Motors Corp. v. United Electrical, Radio and Mach. Workers, (Common Pleas) 31 O. O. 513.

If the legal profession, or anyone, would "discipline" a person who is a citizen of the United States and of the State wherein he resides, it can be done only by ordinary

legal process, as required by Section 2305.01 and 2701.01 of the Revised Code of the State of Ohio.

U. S. v. Cruikshanks, 92 U. S. 542, 23 L. Ed. 588.

In the case at bar, injunctive relief was demanded, together with a finding and judgment of contempt, and costs of proceeding. This demand identifies the so-called disciplinary proceeding as an ordinary action at law, in pursuit of which, none of the incidents thereto could be dispensed with.

III.

Though denominated a disciplinary proceeding, the action brought sought an injunction. Section 2727.01 of the Revised Code of the State of Ohio provides that an injunction, unless allowed as a provisional remedy, is to be allowed as a final judgment in an action. To award a permanent injunction in a so-called disciplinary proceeding, is an impossibility. It follows that the judgment of the Trial Court herein, twice affirmed, constituted a fatal departure from adherence to the requirements of due process of law procedurally. An action under the Revised Code of the State of Ohio must be brought by a plaintiff which possessed the capacity to sue. It is submitted that a Committee appointed by Common Pleas Judges of Ohio is not a legal entity which possesses the capacity to sue and to be sued. The action, or disciplinary proceeding, was neither brought nor maintained in a representative capacity by the said Committee of thirteen lawyers. Nor was the action commenced according to law, which requires that a precipe be issued and that summons be issued for service upon the defendants, though in the case at bar, notice was given by an "Order to show cause" in a disciplinary proceeding.

IV. and V.

The law must proceed regularly in every instance. Where there is an adequate remedy at law, equity will not interfere.

Pomeroy, *Equity Jurisprudence*, IV, section 1363, p. 982, 5th ed.

It is to be noted that no mention is made of the inadequacy of legal remedy, wherewith to prevent petitioners from practicing law, if such representation of claimants is the practice of law. The Trial Court and the reviewing courts proceeded upon a concept of an "inherent right of the court" to proceed against petitioners as if for contempt of court. The representation by one of himself falsely to be an attorney at law, being a misdemeanor, constitutes a bar, not only to injunctive relief, unless inadequacy of the legal remedy is pleaded and shown, but also is a bar to institution of a disciplinary proceeding, if there is ever a right to a disciplinary proceeding against a citizen of the United States and of the State of Ohio, wherein he resides.

VI.

The exclusion of petitioners from the business activity of representation of others before Workmen's Compensation agencies upon the grounds that they represent claimants for a fee, based upon the compensation awarded, while allowing other persons not admitted to the practice of law to represent employers before such agencies, and claimants, where the non-lawyer representative is compensated otherwise than by fees which are contingent upon the result, constitutes a denial of the equal protection of the laws.

Sunday Lake Iron Co. v. Wakefield Twp., 247 U. S. 350, 62 L. Ed. 1154, 38 S. Ct. 495; *Kansas City Southern Rwy. Co. v. Road Improvement Dist. No. 6 of Little River County, Ark.*, 256 U. S. 658, 65 L. Ed. 1151, 41 S. Ct. 604; *Truax v. Corrigan*, 257 U. S. 312, 66 L. Ed. 254, 42 S. Ct. 124.

VII.

It is submitted that, unless the judgment review of which is sought hereby is reversed and remanded, the prohibition

upon the States against *ex post facto* legislation will have been violated, for while petitioners have contended that the basic proceeding was a civil action by definition and was neither properly brought nor maintained, the respondent has treated the proceeding as a disciplinary proceeding, necessarily quasi-criminal, and the result is clearly a forfeiture.

Watson v. Mercer, (Pa., 1834), 8 Pet. 110, 8 L. Ed. 876.

The penalty of forfeiture of the right to carry on one's business in the accustomed manner is such that the prohibition against *ex post facto* legislation must apply.

CONCLUSION

An offense has been created where formerly there was none. It has been done by definition of that which was a lawful and respected occupation, requiring skill, to be the practice of law. The reasoning by which this result was reached is devoid of the quality of informed analysis. Due process of law has been denied, and the petitioners have been driven from their means of earning a livelihood. Equal protection of the laws is flouted. A cannot do that which B and C can do, because A does it for a contingent fee, while B does the same thing but is salaried, and while C does the same thing, facing in another direction. The means chosen, a disciplinary proceeding against fellow Americans cannot be permitted to stand in the harrowing age in which we must daily re-learn the lessons that teach us what America is and stands for.

For the reasons stated, it is respectfully urged that the writ of certiorari herein prayed for be granted.

Respectfully submitted,

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* Body omitted because repeated in essence in Finding of Facts of the Trial Court.

IN THE COURT OF COMMON PLEAS
STATE OF OHIO, COUNTY OF CUYAHOGA, ss

No. 722,206.

IN THE MATTER OF THE UNAUTHORIZED PRACTICE OF LAW IN CUYAHOGA COUNTY, OHIO.

IN RE: BROWN, WEISS AND WOHL, *et al.*

APPLICATION FOR RESTRAINING ORDER AND ORDER TO SHOW CAUSE

[Filed in Court of Common Pleas April 3, 1961]

This application is made by the committee appointed by this court to investigate the Unauthorized Practice of Law in Cuyahoga County, Ohio; to wit: Harold H. Gorman, Chairman, and Stanley Adelstein, George M. Brown, Oscar Brown, Robert W. Chamberlin, Harold Fallon, George Farr, Jr., Anthony Fioretti, James A. Gleason, Alfred C. Grisanti, Charles F. McConnell, George Pillersdorf, and Martin A. Rini, members; that each is an attorney at law having been regularly admitted to the practice of law within the State of Ohio by the Supreme Court of this state, and that by reason thereof, are officers of that court and all Courts of Ohio; that this court upon application of the Cuyahoga County Bar Association and Cleveland Bar Association did find that it was for the best interests of the administration of justice to appoint said committee to investigate the Unauthorized Practice of Law in Cuyahoga County and to initiate such further proceedings as may be necessary to bring to the attention of this court such persons as the committee deems to be engaged

in the Unauthorized Practice of Law in Cuyahoga County, to the end that this court may determine and administer such judicial discipline as it may, in the exercise of its inherent powers deem necessary to prevent and correct the Unauthorized Practice of Law.

Your petitioners represent and say that Brown, Weiss and Wohl are a partnership doing business in Cleveland, Cuyahoga County, Ohio and as such partnership had not been admitted to practice law in the State of Ohio, nor had any individual member of that partnership been so admitted, nor their employees, Garcon Weiss and Edward Ostrovsky; that Leslie Brown, Bernard Weiss, Albert Wohl, Garcon Weiss and Edward Ostrovsky have not been admitted to the practice of law in the State of Ohio, and that as a partnership and individually none of these mentioned herein have the necessary qualifications required by the statutes of Ohio and the rules and regulations of the Supreme Court of Ohio to engage in the practice of law.

Your petitioners represent and state that said Brown, Weiss and Wohl, a partnership, and Leslie Brown, Bernard Weiss, Albert Wohl, Garcon Weiss and Edward Ostrovsky, contract and do render certain legal services for others for a fee in a business operated by Brown, Weiss and Wohl as workmen's compensation consultants.

Your petitioners further state and represent that notwithstanding the fact that said Brown, Weiss and Wohl are not attorneys at law and are not admitted to the practice of law in the state of Ohio, said Brown, Weiss and Wohl individually and through its employees, Garcon Weiss and Edward Ostrovsky, and by attorneys hired by them for that purpose, on divers occasions and for several years last past, have engaged in the practice of law, are still en-

gaged in the practice of law, and with reasonable certainty individually and through their employees, agents and attorneys hired by them for that purpose, continue in said practice of law in the following particulars, to wit:

* * * * * * * * * * * *

Wherefore, the petitioners herein, as officers of this court, and as members of the committee heretofore appointed by this court, to investigate the Unauthorized Practice of Law in Cuyahoga County, pray for an order requiring said Brown, Weiss and Wohl, a partnership, and Leslie Brown, Bernard Weiss, Albert Wohl, Garcon Weiss, and Edward Ostrovsky, their agents and employees, to appear and show cause why said partnership, its employees or agents, should not be enjoined from engaging in the practice of law, and for a further order to show cause why they should not be punished for contempt; that the court grant such other and further relief in the premises as may be just and equitable; that the court render judgment for the cause of this suit against Brown, Weiss and Wohl, a partnership, and Leslie Brown, Bernard Weiss, Albert Wohl, Garcon Weiss and Edward Ostrovsky.

COMMITTEE APPOINTED BY THIS COURT TO INVESTIGATE THE UNAUTHORIZED PRACTICE OF LAW IN CUYAHOGA COUNTY.
By: HAROLD H. GORMAN,
Chairman.

[Duly verified.]

ORDER TO SHOW CAUSE

This day this cause came on to be heard upon the application of members of the committee heretofore appointed by the Court of Common Pleas of Cuyahoga County in the matter of the investigation of the Unauthorized Practice of Law, for an order to show cause why respondents Brown, Weiss and Wohl, a partnership, and Leslie Brown, Bernard Weiss, Albert Wohl, Garcon Weiss, and Edward Ostrovsky, their employees and/or agents, should not be restrained from engaging in the practice of law, and for a further order of the Court for the said Leslie Brown, Bernard Weiss, Albert Wohl, Garcon Weiss, and Edward Ostrovsky to show cause why they should not be punished for contempt of Court: and the Court, upon consideration thereof and being fully advised in the premises, finds that said Motion and application is well taken and therefore sustains the same.

It is therefore ordered, adjudged and decreed that the said Brown, Weiss and Wohl, a partnership, and Leslie Brown, Bernard Weiss, Albert Wohl, Garcon Weiss and Edward Ostrovsky be, and are hereby ordered to show cause by written answer on or before the 25th day of April, 1961, and then and there to show cause, if any they have, why they should not be restrained from the practice of law and why they should not be punished for contempt of court.

JOHN V. CORRIGAN,
Judge.

MOTION TO DISMISS PROCEEDINGS

[Filed in Court of Common Pleas December 7, 1961]

Now come the respondents, Brown, Weiss and Wohl, a partnership, and Edward Ostrovsky, who move that this Court dismiss the proceedings against these respondents for the reason that this Court lacks jurisdiction over the subject matter in the following particulars, as more fully set forth in the brief attached hereto:

(1) That these proceedings are an unwarranted intrusion and interference with the executive and legislative branches of government, and

(2) That administrative procedures have not been first exhausted.

Wherefore, respondents move that the Court dismiss the proceedings pending against them.

ROBERT B. LOEB,
Attorney for Respondents.

FINDING OF FACTS AND CONCLUSION OF LAW PERTAINING ONLY TO DEFTS, LESLIE BROWN, BERNARD WEISS AND ALBERT WOHL, INDIVIDUALLY AND AS A PARTNERSHIP.

Filed in Court of Common Pleas June 29, 1962

This cause came on regularly for trial before the Court, sitting without a jury, on the 27th day of November, 1961 with Gilbert Weil appearing as attorney for the Unauthorized Practice of Law Committee, being the relators (plaintiff) herein, and Robert Loeb appearing as attorney for all of the defendants. The Court having reviewed the pleadings of the parties and heard all of the evidence presented by witnesses finds the facts to be as follows:

Finding of Facts

(1) That Brown, Weiss and Wohl, as a partnership and as individuals and their employees, Edward Ostrovsky and Garson Weiss were not authorized or qualified to practice law in this state; that both the answer as well as the evidence discloses that none of these named individuals had the proper qualifications to practice law in the State of Ohio or any community therein.

(2) That Brown, Weiss and Wohl as a partnership and as individuals directly and indirectly as well as through their employees did hold themselves out as being qualified and competent to render legal advice and counsel and did render legal advice and counsel to various clients of theirs concerning the legal effect of the provisions of the Workmen's Compensation law of the State of Ohio and the rules and regulations adopted and promulgated by the Bureau of Workmen's Compensation and the Industrial Commission of Ohio; that they did prepare and file various forms with the Bureau of Workmen's Compensation and the In-

dustrial Commission of Ohio; that they did select what they advised their clients to be the proper forms in their particular claims, which selection involved the use and application of legal knowledge of the decisions of the Supreme Court of Ohio as well as the statutes governing Workmen's Compensation law in the filing and processing of claims; that they did give advice to their clients as to the legal effects and use of such forms that they filed with the Bureau of Workmen's Compensation and the Industrial Commission of Ohio; that they did act as intermediary in the employment of legal counsel to prosecute claims for settlement as well as claims pending for decision before the Industrial Commission of Ohio; that they did hire and select counsel, namely Napoleon Bell, an attorney at law at Columbus, Ohio to handle the claims of their clients on settlement matters as well as appeals pending on claims before the Industrial Commission of Ohio at Columbus, Ohio; that they did prepare and draft various forms such as applications for occupational disease, applications for injuries, applications for permanent partial awards, forms known as notices of election, applications for re-consideration before the Administrator, notices of appeal before the Board of Review and the Industrial Commission of Ohio in claims pending before said Workmen's Compensation Bureau of the State of Ohio as well as the Industrial Commission of Ohio; that they did advise and counsel their clients regarding the use of the proper forms to be filed to fit their particular legal needs; that they did advise and counsel their clients regarding their legal rights to receive compensation under section A or B of section 4123.57 of the Revised Code of Ohio; that they did render advice and opinions to their clients regarding their legal rights on the settlement of their or its claims; that they did directly and indirectly

through their employees present evidence, examine and cross-examine witnesses and presented arguments of law and facts before the deputy administrator, Administrator of the Bureau of Workmen's Compensation, the Regional Board of Review, and the Industrial Commission of Ohio on behalf of their clients who were seeking compensation under the Workmen's Compensation law; that they did advise and counsel clients as to the filing of notices of appeal from decisions of the deputy administrator as well as the Administrator of the Bureau of Workmen's Compensation both to the Regional Board of Review and the Industrial Commission of Ohio; that in preparing and filing applications for permanent partial awards they would present medical proof and other evidence as to wage statements; that they would do all these acts not as a voluntary service but charged a stipulated fee based upon the percentage of compensation awarded, which the claimant received as a result of their efforts.

(3) That under section 4123.515 of the Revised Code of Ohio, before making or denying an award in a disputed claim, the Administrator of the Bureau of Workmen's Compensation or one of his deputies shall afford to the claimant as well as the employer an opportunity to be heard upon reasonable notice and to present testimony and facts pertinent to the claim; that under section 4123.516, 517 and 518 of the Revised Code of Ohio the requirements regarding appeals to the various constituent bodies of the Bureau of Workmen's Compensation and the Industrial Commission of Ohio are set forth; that section 4123.57 of the Revised Code of Ohio sets forth the manner in which an application for permanent partial award is being made and also sets forth the right to claimants to partake of those benefits through a Notice of Election under either

paragraph A or paragraph B of said section; that section 4123.68 of the Revised Code of Ohio governs the filing of an application for occupational disease benefits and section 4123.01 of the Revised Code of Ohio governs the filing of an injury claim and particularly said section defines the meaning of the term injury; that the various other sections of the Workmen's Compensation law of Ohio and decisions of the Supreme Court of Ohio governs the rulings to be made by the Administrator, Board of Review and the Industrial Commission of Ohio; that the hearings under section 4123.515 before the deputy administrator and or the Administrator, are usually heard in cases in which there is a dispute such as whether or not the injury occurred in the course of and arising out of the employment, was the injury caused by an accident within the meaning of the statute and decisions of the Supreme Court, was the disability causally related directly and proximately to the accident, and various other legal problems such as extra-territorial jurisdiction; that these same problems are involved in hearings both before the Board of Review as well as the Industrial Commission of Ohio; that testimony is taken and witnesses examined and cross-examined at these various hearings and that arguments of law as well as fact are presented at these various hearings; that Brown, Weiss and Wohl both as a partnership and as individuals directly and indirectly through their employees did counsel, advise, examine and cross-examine witnesses before these various bodies; that they did present arguments of law and fact both before the Administrator and the Board of Review and the Industrial Commission of Ohio; that they did file notices of appeal in accordance with the statutory provisions of the law; that they did file applications on behalf of their clients in which the use and knowledge of the statutory requirements of

occupational disease and injury were necessary in order for them to file the proper claim; that they did advise and counsel their clients as to their rights of appeal; that they did file applications for permanent partial awards under the particular statute (4123.57) of the Revised Code of Ohio and did advise and counsel their clients regarding the notice of election as to whether to take under paragraph A or B thereof; that said counsel and advice required not only the knowledge of law as stated in the statute governing permanent partial awards but also decisions of the courts involving the meaning of the words impairment of earning capacity and vocational handicap as stated in the statute; that in filing applications for lump sum settlement they did advise and counsel their clients regarding the legal effects of such settlement insofar as the future rights to compensation were concerned; that they did file applications for lump sum settlement and when the hearings were held in Columbus, Ohio, they referred their clients to a Napoleon Bell, an attorney at law at Columbus to handle these settlement claims, which they had filed on behalf of their clients; that they did pay said Napoleon Bell a stipulated amount for the services he rendered to their clients; that in appeals filed to the Industrial Commission of Ohio by them, they did retain Napoleon Bell to represent their clients before the Industrial Commission of Ohio on said appeals.

Conclusion of Law

Court, therefore, concludes as a matter of law that all of the acts as found in the finding of fact in representing their clients before the Industrial Commission of Ohio, the Administrator of the Bureau of Workmen's Compensation and the Board of Review did constitute the practice of law and involved the use and knowledge of the Workmen's

Compensation law as well as the various decisions of the Courts of Ohio; that in preparing and determining which application to file such as whether it should be an injury application or an occupational disease application, notices of appeal, applications for permanent partial awards and notice of election that were performed by said defendants directly or indirectly through their employees did involve the use and application and knowledge of the Workmen's Compensation law as well as the various decisions of the Courts of Ohio; that in rendering advice and counsel to clients as to the type of claims to file, and their rights as far as permanent partial awards, as well as notices of appeal and settlements, involved the use and application of the Workmen's Compensation laws of the State of Ohio and the Courts of Ohio; that the examination and cross-examination of witnesses and the arguing of facts as applied to the law before the Administrator, of the Bureau of Workmen's Compensation, Board of Review and the Industrial Commission of Ohio did involve the knowledge of the Workmen's Compensation law and the decisions of the Courts of Ohio; that the practice of law is not limited to the conduct of cases in Court, but embraces the preparation of forms incident to actions and such proceedings, and the management of those actions and special proceedings on behalf of clients and in general all advice and counsel to clients and all actions taken by them for the clients in matters connected with the law; and that, therefore, the acts as stated in the finding of facts did constitute the unauthorized practice of law. Defendants except.

EARL R. HOOVER,
Judge.

TRANSCRIPT OF DOCKET AND JOURNAL ENTRIES IN THE COURT OF COMMON PLEAS

1959, April 18. Order consolidating Case No. 715,011 Cuyahoga County Bar Association and Case No. 715,293, Cleveland Bar Association under new Case No. 722,206, filed. Arthur J. Stern, Chairman, Cleveland Bar Association and Elmer C. Myers, Chairman, Cuyahoga Bar Association, Judges Earl R. Hoover, Joseph A. Artl, and John V. Corrigan, Common Pleas Court.

1959, April 18. To Court: This cause came on to be heard on the 17th day of April, 1959, on the separate Applications of the Unauthorized Practice of Law Committees of Cuyahoga County Bar Association and Cleveland Bar Association, respectively, wherein application was made for an order of this Court to cause an inquiry into the unauthorized practice of law by corporations, firms and individuals in Cuyahoga County, Ohio.

Upon consideration thereof, the Court, being fully advised in the premises, finds that the said applications address themselves to the inherent powers of the Court, and that the Court deems it for the best interests of the administration of justice that the prayer contained in said Applications be granted.

The Court further finds, upon due consideration, that the aforesaid separate Applications have been consolidated and that it is for the best interests of the Court to join these separate Applications in this separate action.

It is, therefore, ordered, adjudged and decreed: 1. That Stanley Adelstein—George M. Brown—Oscar Brown—Robert W. Chamberlin—Harold Fallon—George Farr, Jr.—Anthony Fioretti—James A. Gleason—Alfred C. Grisanti Charles F. McConnell—George Pillersdorf—Martin A. Rini and Harold Gorman, who shall act as Chairman, each of whom are officers of this Court, be, and they hereby are,

appointed to serve at the pleasure of the Court, as a Court's Committee, and directed by the Court, to make an inquiry as to the unauthorized practice of law in Cuyahoga County, Ohio, and that said committee shall:

a. Investigate, under the direction and supervision of this Court, all matters of alleged unauthorized practice of law in Cuyahoga County and shall confine its investigation and inquiry to the unauthorized practice of law;

b. Initiate such further proceedings as may be necessary to bring to the attention of this Court such persons, firms or corporations, as the Committee deems to be engaged in the unauthorized practice of law in Cuyahoga County, to the end that this Court may determine and administer such judicial discipline as it may, in the exercise of its inherent power, deem necessary, expedient or effective to prevent or correct the unauthorized practice of law;

c. Upon authorization first granted by the Court, subpoena witnesses to appear before it and compel the production of books, documents and data necessary to the inquiry and investigation herein authorized and directed. Also, administer oaths to witnesses;

d. Conduct closed hearings of matters referred to it which hearings shall be closed to any person or persons other than members of the committee, the Court constable, official stenographer, witnesses and counsel for the Court's Committee, respondent and his; or its, witnesses and counsel unless the respondent requests that his testimony be given publicly;

e. Keep secret all testimony, evidence and argument, adduced or made during any closed hearing before said Court's Committee, or sub-committee, including the names of persons, firms or corporations, who may be under investigation which shall not be divulged except to the court, or unless the respondent requests that his testimony be given publicly, until after appropriate order of the Court, or until application shall be made in the Court for injunction proceedings;

f. Use the services of the official court reporter at all times during said hearings and the cost of any transcripts of evidence necessary in the judgment of

the Court shall be paid out of the County Treasury as authorized and required by law.

2. That the Chairman of the Court Committee shall be authorized to appoint sub-committees, consisting of three members of said Court Committee, any two of whom may act, and to conduct hearings, as provided in Paragraphs 1c and 1d, herein, and to report the facts presented to said sub-committees, together with its recommendations to the Court Committee, for action.

3. That the Court Committee, subject to the approval of this Court, shall be authorized to designate committee counsel for the guidance and assistance of the Court Committee, or its sub-committees, in the conduct of its investigation as provided herein.

IT IS FURTHER ORDERED that said Court's Committee shall appear before this Court forthwith to qualify by taking an appropriate oath for the faithful performance of the duties hereby imposed upon them, and they shall thereupon proceed forthwith as set out herein until further order of this Court.

/s/ ARTHUR J. STERN,
Arthur J. Stern,
Chairman of The Cleveland Bar Association, Committee on Unauthorized Practice of Law.

/s/ ELMER C. MYERS.
Elmer C. Myers, Chairman of The Cuyahoga County Bar Association, Committee on Unauthorized Practice of Law.

/s/ EARL R. HOOVER,
Earl R. Hoover,
/s/ JOSEPH A. ARTL,
Joseph A. Artl,
/s/ JOHN V. CORRIGAN,
John V. Corrigan,
Judges of the Court of Common Pleas.

. . . . . .

1962, June 29. Finding of Fact and Conclusion of Law, filed.

1962, June 29. To Court: This cause came on regularly for trial before the Court on the 27th day of November, 1961 with Gilbert Weil appearing as Attorney for the plaintiff and Robert Loeb appearing as attorney for the defendants, and the Court having heard the testimony and having examined the proof offered by the respective parties as well as the pleadings, and the Court being fully advised in the premises and having filed herein its finding of fact and conclusions of law, and having directed that judgment be rendered in accordance therewith.

Now, therefore, by reason of the law and finding aforesaid, it is hereby ordered, adjudged and decreed that Brown, Weiss and Wohl, a partnership and Leslie Brown, Bernard Weiss and Albert Wohl, as individuals, and through their employees and agents are hereby ordered to cease and desist from the acts as disclosed by the evidence that constitute the practice of law and they are hereby restrained and enjoined from performing the following acts either directly or indirectly, through their employees and agents:

(1) In holding themselves out directly or indirectly or through their agents and employees as being legally qualified and competent to render advice and counsel and in rendering advice and counsel to individuals, firms and corporations concerning the legal effect of provisions of law passed by the legislature of the State of Ohio and rules and regulations adopted and promulgated by the Administrator of the Bureau of Workmen's Compensation and the Industrial Commission of Ohio.

(2) In preparing and filing the various forms issued by or under the supervision of the Administrator of the Bureau of Workmen's Compensation, the Regional Board of Review and the Industrial Commission of Ohio; including the selection of the proper form involving the use and

application of legal knowledge in the filing or processing of claims or otherwise practicing before the administrator of the Bureau of Workmen's Compensation, Board of Review and Industrial Commission of Ohio; and in the giving of advice to clients as to the legal effect of the use of such forms.

(3) In filing or causing to be filed in certain instances appeals from the decisions of the Administrator, Board of Review and Industrial Commission of Ohio.

(4) In furnishing, suggesting or acting as intermediary in the employment of legal counsel to prosecute appeals from the decisions of the Administrator, of the Bureau of Workmen's Compensation, Board of Review and the Industrial Commission of Ohio.

(5) In counseling, advising and otherwise performing services in connection with the legal rights of individuals, firms and corporations under the provisions of the laws of the State of Ohio related to the Bureau of Workmen's Compensation and the Industrial Commission of Ohio including the rules and regulations promulgated by both of those bodies.

(6) In acting as intermediary and referring to a lawyer selected by themselves to perform legal services in connection with the securing and obtaining of compensation and medical expenses to the Workmen's Compensation laws of the State of Ohio and by forwarding such legal work directly to such lawyer.

(7) In preparing affidavits of facts or evidence such as medical reports, wage statements and other forms to support the claims of their customers for compensation and medical expenses under the provisions of the Workmen's Compensation laws of the State of Ohio.

(8) In advising and counseling divers parties for Workmen's Compensation that such applications that they

selected, prepared and filed with the Bureau of Workmen's Compensation and the Industrial Commission of Ohio were designed to fit their particular legal needs and requirements.

(9) In selecting, preparing and drafting various forms and applications on behalf of their customers or clients with the intent and for the purpose of obtaining compensation and medical expenses under provisions of the Workmen's Compensation law and under the rules promulgated by both the Industrial Commission of Ohio and the Bureau of Workmen's Compensation of Ohio such as notices of election and applications for compensation under the section of the law governing permanent partial awards.

(10) In rendering opinions to their customers concerning the probability of, and their legal rights in, the settlement of claims under the Workmen's Compensation laws of the State of Ohio.

(11) In presenting evidence, examining and cross examining witnesses, and presenting arguments before the Administrator, Deputy Administrator of the Bureau of Workmen's Compensation, the Regional Board of Review and the Industrial Commission of Ohio as representatives on behalf of divers parties.

(12) In preparing and filing notices of appeal on behalf of their customers from the decisions of the Deputy Administrator, Administrator, Regional Board of Review and Industrial Commission of Ohio.

(13) In preparing and filing applications known as C-92 applications together with medical proof and appearing before said Industrial Commission of Ohio at hearings involving C-92 applications and also in preparing and presenting medical evidence regarding lump sum settlements and appearing at those hearings involving lump sum settlements and advising their customers as to the legal rights

involved in notices of election under the law as well as settlements of their claims.

That plaintiff have judgment against said defendants, Brown, Weiss and Wohl, a partnership, and Leslie Brown, Bernard Weiss and Albert Wohl, for its costs pertaining to Leslie Brown, Bernard Weiss and Albert Wohl, individually and as a partnership, beginning with the filing on April 3, 1961 of Plaintiff's "Application for Restraining Order and Order to Show Cause" against said defendants. Defendants Except. Signed Earl R. Hoover, Judge. (Civil Journal 357, page 1127.)

[Duly certified.]

* * * * * * * * * * * *

(669)

Cross Examination of Gilbert Weil

By Mr. Loeb:

Q Mr. Weil, you were counsel for the Court Committee, is that correct, sir? A. That is right.

Q. As such counsel was any application made by you to the Bureau of Workmen's Compensation or the Industrial Commission to prohibit the practice before it of Brown, Weiss & Wohl? A. Well, at the original order—

Q. Prior to coming to court, sir, my question is. A. I want to answer your question. If you will just look at the original Journal Entry, signed by the Court.—

Q. Sir,— (670) A. May I finish what I have to say?

Mr. Loeb: Objection, your Honor.

The Court: Wait a minute. Answer his question.

A. That is right.

Mr. Loeb: He will have an opportunity to say something further on redirect.

The Court: Let's get the question here. I don't know that you finished the question. What is your question, now?

Q. If an application was made by the Court Committee to either the Industrial Commission or the Bureau of Workmen's Compensation to prohibit Brown, Weiss & Wohl from practicing before it? A. The Journal Entry prescribes—

Mr. Loeb: Yes or no, your Honor, was the application made.

The Court: Answer the question directly.

The Witness: We have no authority to do that, your Honor.

Q. Is the answer yes or no? A. Couldn't be done. We have no authority.

Q. Yes or no, please, was it? A. I am sorry, I can't answer it yes or no. We have no (671) authority—

The Court: You didn't do it?

The Witness: We are limited by the order of this Court.

Mr. Loeb: Your Honor, either an application was made or it wasn't made. This is a simple question. It can be answered yes or no.

The Witness: I understood an application was made by the Ohio State Bar Association but not by our Committee.

By Mr. Loeb:

Q. Sir, you are evading the question. Did the Court Committee, in the matter of Brown, Weiss & Wohl, apply to prohibit them of this practice? Yes or no, was it done?

The Court: The answer is no.

Mr. Loeb: Why wouldn't it come from the witness, your Honor?

The Witness: Because that is the way I am going to answer it. We were never authorized by this Court to do that.

* * * * * * * * * * *

(676)

Q. Sir, do you know of any other court committee, agency, attorney, Bar Association, member of a Bar Asso-

ciation, that has requested of the Industrial Commission and the Bureau of Workmen's Compensation or any subagency thereunder, that Brown, Weis & Wohl be prohibited from representing the claimant? A. I believe the Ohio State Bar has written a letter to the Commission asking that all laymen, including Brown, Weiss & Wohl, who practice law before the Commission, be prohibited.

Q. Is it your understanding that Brown, Weiss & Wohl is specifically enumerated in the Ohio Bar? A. It is my understanding that it is.

Q. When did this occur, sir? A. I really wouldn't know. Sometime within the last, I guess, three to eight months.

Q. Therefore, it occurred after this action was instituted, is that correct? A. I notified the Ohio State Bar, in compliance with my authority on the Committee, that such an action was being involved and who were involved.

Q. Sir, the notice by the Ohio State Bar Association or requests by them that you described, did this occur before or after this lawsuit against Brown, Weiss & Wohl (677) was brought? A. Well, I sent them a copy of our application, so I imagine it occurred after that.

. . . . . .

Mr. Weil: Your Honor, we rest.

The Court: All right.

Mr. Loeb: Counsel for the respondents at this time move for a directed verdict of dismissal and for judgment of dismissal as a matter of law on the following basis:

1: This Court has no jurisdiction over the (678) subject matter.

2: There has been a failure to exhaust administrative remedies and total failure of evidence to show that the administrative remedies were first exhausted or even attempted; and

3: There has been a failure to establish a cause of action, and, therefore, we move for a directed verdict of dismissal or for a judgment of dismissal in this action.

The Court: Motion is overruled. Let's proceed with the respondents' testimony.

* * * * * * * * * * *

(693)

Mr. Loeb: If it please the Court, during the progress of this case the Court Committee called for cross-examination the respondents, at which time this Court ruled that they could be called for cross-examination.—

The Court: Of course, the question is now presented for the first time, but on a quick check of the law during our recess here, I am convinced that there is no criminal act in the (694) unauthorized practice of law as such. In other words, the unauthorized practice of the law is not a crime.

* * * * * * * * * * *

(746)

The Court: Let me state this, if I am wrong, Mr. Weil, will you please correct me, because I don't want to say that you have conceded something that you have not conceded.

If I understand correctly, you concede that now and over a great period of years laymen, who are not lawyers, appear before various levels in the Workmen's Compensation field and represent clients?

Mr. Weil: That is correct, your Honor, and I say to you, your Honor, that is the thing we are trying to stop in this case.

The Court: Now, that issue is conceded.

* * * * * * * * * * *

RESPONDENTS' CASE

Thereupon the respondents, further to maintain the issues on their part to be maintained, called as a witness

Frank Gafney,

who, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Loeb:

* * * * * * * * * * * *

(747)

Q. Do you know, sir, if the Industrial Commission or the Bureau of Workmen's Compensation or any of its sub-agencies or employers have taken any steps to prohibit such practice?

Mr. Weil: Your Honor, I am objecting. He is pulling that same stunt all over again.

(748)

The Court: I think you have conceded that they have been permitted to do it?

Mr. Weil: That is just what I told the Court before.

The Court: Sustained.

Mr. Loeb: In other words, that is conceded, your Honor?

The Court: Yes, that is conceded.

* * * * * * * * * * *

(751)

Thereupon the respondents, further to maintain the issues on their part to be maintained, called as a witness

Gilbert Weil,

who, having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Loeb:

Q. Mr. Weil, do you know—

Mr. Weil: What is he calling me for, cross-examination or what, your Honor?

Mr. Loeb: I am calling you as my own witness.

Mr. Weil: Fine. It is direct examination, then.

Mr. Loeb: Direct examination.

Mr. Weil: Thank you.

Q. Mr. Weil, do you know of instances in which the Industrial Commission or Bureau of Workmen's Compensation has ever prohibited individuals from practicing before it? A. The Industrial Commission, to my knowledge, has prohibited dishonest practices of any kind, when the investigation at last disclosed dishonest practices, and that goes for non-lawyers as well as lawyers. They recently have barred the firm of Fleck & Fleck, lawyers, from (752) practicing before them. So, the Commission has done both.

Mr. Loeb: No further questions.

* * * * * * * * * *

(754)

Q. Has the Industrial Commission acted to bar Brown, Weiss & Wohl from the practice before it? A. It will when this Court makes a finding.

Q. Sir, the question was have they? A. They will when the Court makes a finding.

The Court: Answer the question.

The Witness: I can't your Honor, because there is no action pending now before the Industrial Commission.

The Court: Then the answer is that they haven't.

The Witness: Because there is no action pending.

Mr. Loeb: Will you kindly instruct (755) the witness to answer, please?

The Court: The Court will take that to be the answer, that they haven't.

Q. Were they asked to prohibit Brown, Weiss & Wohl from practicing before it? A. By whom?

Q. By anyone, sir. A. You are cross-examining me and I will answer your question by saying when this Court makes a finding and if this Court finds they—

The Court: Mr. Weil, answer the question.

Mr. Weil: I am saying I object to him asking me. He is cross-examining me. This is direct examination, your Honor.

The Court: It is not necessarily cross-examination. He is asking you as a matter of fact whether this has ever happened.

The Witness: I don't know. I don't know, your Honor.

Q. Have you ever asked them to prohibit Brown, Weiss & Wohl? A. I have no authority. I can't ask anybody.

The Court: That is not the question. The question is have you ever asked them.

(756)

A. Well, if it is doing it through this Court, I am doing it, yes.

Q. Have you ever? A. If this is considered an action of the illegal and unauthorized practice of law and if it is sustained then I am doing it through this Court.

Mr. Loeb: If it please the Court,—

The Court: To make it fast, have you ever filed an application to the Industrial Commission, itself, to have these men barred from practicing?

The Witness: No, I haven't because I have no authority to do that, your Honor.

Q. Has the Court Committee, that you represent, filed such an application? A. They have no such authority. Their only—

The Court: Well, they never done it, then?

The Witness: No. It is limited by your own order, your Honor.

Mr. Loeb: No further questions.

* * * * * * * * * * *

(780)

Mr. Loeb: The respondents rest.

The Court: All right.

Does the Court's Committee have any rebuttal?

Mr. Weil: No, we don't. We rest, your Honor.

Thereupon the petitioner rested.

Thereupon the respondents rested.

Testimony closed.

* * * * * * * * * * *

(782)

Mr. Loeb: We move for a directed verdict of dismissal or for judgment of dismissal as a matter of law for the reasons that the Court has no jurisdiction of the subject matter. There has been a total failure to exhaust the administrative remedies and a total lack of evidence that administrative remedies were first exhausted, and lastly for the reason that there has been a failure to show a cause of action.

The Court: Overruled. Note an exception.

* * * * * * * * * * *

OPINION OF THE COURT OF APPEALS

Skeel, J.

This appeal comes to this court on questions of law from a judgment entered by the Court of Common Pleas of Cuyahoga County finding the respondents, who are admittedly not licensed to practice law, guilty of engaging in the practice of law before the Industrial Commission, Bureau of Workmen's Compensation, and entering a restraining order enjoining the respondents from continuing in such unlawful conduct.

There is no dispute about the facts. The respondents as a partnership, themselves individually, and the partnership's employees are admittedly engaged as lay representatives or agents in servicing and presenting claims of workmen and, in the event of the death of a workman, their dependents for injuries sustained while acting in the course of such employee's employment, before the administrator and the regional board of appeals of the Bureau of Workmen's Compensation, seeking compensation for such injuries or support where death results therefrom under the provisions of Chapter 4123., Revised Code.

While the appellants set out eight assignments of error they are grouped into four main headings for argument in their brief, to which this court will direct and limit its attention: They are:

"I. The Trial Court Had No Jurisdiction Over the Subject Matter of This Case

A. Petition Failed to Invoke or Exhaust Clearly Available Administrative Remedies.

B. The Ohio Constitution and Statutes Authorize Only the Commission to Determine the Qualifications of Its Own Practitioners.

"II. Representation of Claimants Before the Industrial Commission Is Not 'the Practice of Law' for Which Only Licensed Attorneys are Qualified.

"III. The Cross-Examination of the Respondents Below, Who Were Subject to Criminal Sanctions, Was Highly Improper and Prejudicial.

"IV. Appellants Were Not Given a Fair Hearing When Edward Ostrovsky, Appellants' Agent and a Party to the Same Case, Was Excluded from the Court-room."

The first assignment of error is without legal foundation. The Industrial Commission, Bureau of Workmen's Compensation, is an administrative agency of the executive department of the government. It has been granted limited quasi-judicial powers in the administration of the fund created by law for the benefit of employees or for their dependents where death is occasioned by such injuries while acting within the course and scope of their employment. The Constitution of Ohio (Section 35 of Article II) empowers the legislature to pass laws providing compensation for workmen and their dependents in case of death for injuries or occupational diseases occasioned, suffered or contracted in the course of their employment, through a state fund created by compulsory contribution of employers and administered by the state through a bureau to determine the terms and conditions upon which compensation will be made for injury, occupational disease or death, suffered by an employee when he is acting within the scope of his employment. Such system of compensating injured employees, when thus provided for by law and complied with by an employer, relieves such employer from all common law liability to an employee when injured while about his work. The Constitution, in part, provides:

"* * * Laws may be passed establishing a board which may be empowered to classify all occupations according to their degree of hazard, to fix rates of contribution to such funds according to such classification and

to collect, administer and distribute such fund and determine all rights of claimants thereto."

Under the authority of Section 35 of Article II of the Constitution, Chapters 4121 and 4123 of the Revised Code have been enacted creating the Industrial Commission, which act now includes (amendment of 1955) and creates the Bureau of Industrial Compensation to be administered by the Industrial Commission. There is no provision in either Chapter 4121. or 4123., Revised Code, that authorizes the Commission to define the right of a claimant to employ a lay representative to present his claim to the Commission, nor does the act set out the standards necessary to act as a lay representative for a claimant. There are, however, a number of places in the statutes that contain provisions where, by implication, such representation seems to be assumed and regulated. Section 4123.05, Revised Code, provides:

> "The industrial commission shall adopt reasonable and proper rules to regulate and provide for the kind and character of notices, and the services thereof, in cases of accident and injury to employees, the nature and extent of the proof and evidence, and the method of taking and furnishing the same, and to establish the right to benefits of compensation from the state insurance fund, the forms of application of those claiming to be entitled to benefits or compensation, and the method of making investigations, physical examinations, and inspections, and shall prescribe the time within which adjudications and awards shall be made."

Section 4123.06, Revised Code, provides, in part, after setting out that the Commission shall make rules concerning the payment of fees to agents or representatives and to prevent solicitation of employment in the prosecution and defense of claims and rules to promote the orderly hearing and determination of claims as follows:

"The commission shall suspend from practice before the commission or in the department of industrial relations for such period of time as the commission determines, or reprimand, as the nature of the offense warrants, representatives of claimants or employers who violate any reasonable rules or regulations made and promulgated by the commission under authority of law. If the commission suspends or reprimands any person admitted to practice law, the commission shall notify the Ohio state bar association and the bar association of the community in which such person resides of the action taken by the commission.

"Before such representative is suspended or reprimanded, written charges shall be filed against him by said commission, or by a person directly interested in the results of the services of such representative stating distinctly the grounds of complaint, and a copy thereof, certified by the secretary of the commission, shall be served upon such representative. After such service, such representative shall be allowed a reasonable time to appear and make a defense, introduce evidence and be heard either in person or by counsel, or both."

It is also provided that in case of an order of suspension or reprimand of one practicing before the Commission, an appeal may be taken on questions of law to the Supreme Court.

Section 1 of the Rules of Practice, passed and published by the Commission, provides:

"Except as herein provided, no person may practice before the Industrial Commission of Ohio unless duly licensed to do so by the Industrial Commission of Ohio.

"Practice before the Industrial Commission of Ohio shall be deemed to include practice before any Regional Board of Claims, or any deputy, referee, examiner, supervisor, superintendent, secretary, auditor, actuary, inspector, investigator or employee appointed by the Commission for the purposes contemplated by the workmen's compensation law."

An examination of the record in this case does not demonstrate with any degree of clarity whether or not the defendants appellants complied with the rules of the Commission and were licensed as therein provided and required. The conclusion must be that they have not complied with this rule of the Commission. However, this fact is not of great importance.

It is the contention of the appellants that because of the fact that the rules of the Commission required a trial before it on charges properly preferred resulting in disciplinary action against one licensed to practice before it under the authority of its rules, the courts are without jurisdiction to proceed against the defendants for the unlawful practice of law even though they are admittedly not lawyers and are, in fact, actively representing claimants before the Commission, until all so-called administrative remedies have been exhausted. It is our conclusion that by reason of the cause of action stated in the committee's petition and the admissions of the answer of the appellants as to their acts in presenting claims of workmen for compensation under the Compensation Act, this contention cannot be supported. The Industrial Commission cannot authorize (by rule) the doing of an act which is contrary to law. It cannot permit or authorize by license a layman, not admitted to the bar, to practice law. The right to discipline lawyers and those unlawfully attempting to practice law is a natural right of the courts and such right cannot be invaded by a non judicial agency or by one which is permitted to exercise limited or quasi judicial power in a limited or restricted field. This claim of error is, therefore, overruled.

Before taking up the question presented by appellants' claim of error No. 2, claims Nos. 3 and 4 will be considered.

During the trial, the appellants were called and, over their specific objection, compelled to testify as upon cross-examination concerning their activities as lay representatives of workmen seeking compensation for injuries before the agencies of the Industrial Commission. There can be no doubt but that the statutes prohibiting unlicensed persons from practicing law include within their provisions sanctions or penalties that may be imposed, in a proper proceeding, for violation of the provisions of such sections. It would be a violation of the constitutional rights of persons charged with the unlawful practice of the law for the court to overrule their objections to being compelled to testify as to their alleged unlawful conduct. Such error is not mitigated by the fact that the objecting appellants were thereafter called and testified voluntarily in support of their defense. However, since there is virtually no dispute about the essential facts of the case, and the real issue here presented deals with the legal rights of the parties upon the facts as thus presented, such error could in no way prejudice the appellants. We also find that the parties were afforded a fair trial. The fact that one who was a party and whose rights had been determined by a default judgment prior to the commencement of this trial was excluded from the courtroom, if he was to be called as a witness, could in no way prejudice the rights of the other defendants. The right to be in the courtroom when the trial is in progress is personal to each party and not to the parties collectively. This claim of error is overruled.

The power to manage and disburse the funds held by the Industrial Commission for the benefit of injured workmen is one created by law. The distribution is to be made when a lawful right thereto is established. There are, of course, many cases where the conclusion that a claimant

is entitled to compensation cannot be disputed and payment is made without the necessity of a trial of disputed issues of fact. The act of payment of benefits in such case is clearly an administrative act. But when, after the administrator allows or denies a claim and a reconsideration is demanded by either the employer or employee under the law, an adversary proceeding is commenced and the legal rights of the parties must be judicially determined. There is a clear distinction between the performance of a ministerial act by an administrative officer and the determination of legal rights of contending parties in a judicial proceeding.

The determination of the question of whether or not the conduct of the appellants, in servicing claims of workmen, or their dependents seeking compensation for physical injuries sustained while acting in the course and scope of their employment under the provisions of the Workmen's Compensation Act, constitutes the practice of law is a matter within the exclusive jurisdiction of the judicial branch of the government. *Judd vs. The City Trust and Savings Bank*, 133 O.S. 81, 12 N.E. 2d 288. The practice of law can be defined as acting in a representative capacity in protecting, enforcing, or defending another person in the exercise of his legal rights and duties and in counseling, advising and assisting him in relation thereto. While the practice of law, as thus defined, is difficult of application in some fields, certainly when prosecuting or defending a person or his claims in a judicial proceeding, there can be no doubt that such conduct constitutes the practice of law.

We find no ground to support the inference of the appellants that the purpose of providing industrial compensation under the jurisdiction of the Industrial Commission was to simply the process of dealing with claims for injuries sustained by workmen and that such simplification en-

visioned the elimination of the services of lawyers in the processing of such claims. The purpose of the act was to change the legal basis upon which compensation was to be made to injured workmen and the forum before which the right to compensation should be determined in the first instance. There is no justification for the claim that engaging the services of lawyers to protect the rights of a claimant or employer in disputed claims would in any way nullify the purposes to be accomplished by the Workmen's Compensation Act.

The appellants rely heavily on the case of *Goodman vs. Beall*, 130 O.S. 427, 200 N.E. 470, in which the Supreme Court held in the syllabus:

> "One appearing or practicing before the Industrial Commission of Ohio in a representative capacity subsequent to the time a claimant first receives notice of the disallowance of his claim under Section 1465-90, General Code, is engaged in the practice of law; and prohibition will lie against such commission to prevent the appearance or practice before it on rehearing proceedings of any person other than an attorney at law, duly admitted to practice."

At the time of this decision (1936), Section 1465-90 of the General Code, in part, provided:

> "* * * In all claims for compensation on account of injury, or death resulting therefrom, if the commission finds that it has no jurisdiction of the claim and has no authority thereby to inquire into the extent of disability or the amount of compensation, and denies the right of the claimant to receive compensation or to continue to receive compensation for such reason, then the claimant may within thirty days after receipt of notice of such finding of the commission, file an application with the commission for a rehearing of his claim, whereupon the former action of the commission thereon shall be vacated and the commission shall fix a date for rehearing of such claim and give the claimant and

his employer at least one week's prior notice thereof; at said hearing, if the claimant is asking for compensation from the state fund, the attorney general, or any one or more of his assistants or special counsel who have been designated by him to act as attorney to the commission, may represent the state fund, and in the absence of the attorney general or his designated assistants or special counsel, the commission shall select one or more of the attorneys in the employ of the department of industrial relations to represent the state fund. Such hearing shall be had and the evidence for and against the allowance of the claim submitted as in the trial of civil actions. The commission shall pass upon the admissibility of evidence, but either party may at the time make objection and take exception to the ruling of the commission thereon, and if the commission refuses to admit any evidence, the party offering the same shall state the nature of such evidence and the matter which such party proposes to prove thereby, and such statement shall be made a part of the record of such rehearing. Such rehearing may be continued from time to time. * * *"

It is clear that the holding of the Supreme Court in the *Goodman* case, *supra*, was that after the application of the claimant was "first" refused, one representing such claimant in all subsequent procedure seeking the right to participate in the fund administered by the Commission was acting in the practice of law. The case does not hold, as is contended for by the appellants, that only the rehearing to produce a record of the evidence necessary to be presented on appeal to the Court of Common Pleas constituted the practice of law. While the court stresses this point in the opinion, the syllabus states the law of the case. The statute, which provides for legal representation of the State (Industrial Commission) by the Attorney General, upon an application for rehearing, after notice of the first refusal of the right to compensation to a claimant indicates that

an adversary proceeding was then intended. This was the holding in the *Goodman* case.

In the case of *People vs. Goodman*, 366 Ill. 346, 8 N.E. 2d 941, the Supreme Court of Illinois had before it an almost identical case as that of *Goodman vs. Beall, supra*. The Ohio case was there cited and considered. The Supreme Court of Illinois, on page 944 of the Northeastern Report, said:

> "* * * The procuring of an agreement enabling an unlicensed person to control the negotiations and the litigation that might follow on the failure of the negotiations, and the hiring of licensed attorneys to conduct litigation for others, for the financial profit of the hirer, has been defined as the practice of law. * * *"

And on page 946, it is stated:

> "Under the issues made, the respondent, in the business carried on by him, on occasion must decide whether the facts present a given cause of action within the Workmen's Compensation Law. * * * To make such decision is often a difficult task and competent lawyers may differ as to the forum in which the redress may properly be sought. Profound lawyers are not to be criticized because they are sometimes puzzled in determining what constitutes interstate transportation as distinguished from intrastate. * * *"

The facts in the case at bar show clearly that the appellants not only advised "clients" of their rights under the Workmen's Compensation Act and conducted trials before the administrator and regional boards of review, but also hired and paid fees directly to licensed lawyers to appear in the interest of their clients in the trial of appeals in the Court of Common Pleas. It must also be noted that in at least five instances in each of the last ten volumes of the Ohio Supreme Court, questions involving the basic legal rights of claimants were considered and decided involving

questions of law that needed to be determined in the first instance before an appeal to the Court of Common Pleas was taken. In these cases, the advising on a course of conduct based on the legal rights of the parties concerned, surely constitutes the practice of law. The appellants admit engaging in such activities.

One other factor needs consideration with regard to the weight to be given to the case of *Goodman vs. Beall, supra.* The procedural sections of the Workmen's Compensation Act have been completely revised since its case was decided. Under the amendments and the enactment of additional sections to the provisions of Chapters 4121. and 4123., Revised Code, by the One Hundred and First General Assembly of Ohio (1955) a Bureau of Workmen's Compensation (R.C. 4121.12) was created to be administered by an administrator. Section 4121.121 defines the duties of the administrator which include those imposed upon him in Chapter 4123., Revised Code. Applications for claims are, in the first instance, to be filed with the Bureau of Workmen's Compensation, which bureau is under the supervision of the administrator. If the administrator determines upon investigation that a claimant is entitled to an award, notice of such fact must be given the employer and if the employer consents thereto or does not object within ten days after notice, payment of the award will be made. When the employer objects "the claim shall be forthwith set for hearing as provided by Section 4123.515, Revised Code." (R.C. 4123.513 and 4123.514) Under the provisions of Section 4123.515, before compensation in a disputed claim can be awarded or denied, a hearing must be afforded the claimant and the employer. The administrator shall state concisely his decision and give notice to the claimant and the employer. A reconsideration of the decision is provided for

which the administrator may grant or refuse. If granted, the parties (employer and employee) are entitled to another hearing at which they may produce evidence. The claimant or employer may appeal the original decision of the administrator or such appeal may be taken as to the original order upon the refusal to grant reconsideration or from the order made upon reconsideration to the regional board of review upon proper notice of the final decision and order of the adminstrator. The parties to such an appeal are the administrator, the claimant and the employer, the administrator being represented by the Attorney General or one of his assistants or one of the attorneys of the department (R.C. 4123.518). Under these new and amended provisions, there can be no question but that after the administrator has entered his decision on the claimant's application in the first instance, all procedure thereafter, beginning with the application for a rehearing before the administrator and each successive step, as just outlined, to and including the appeal to the court from the final order of the regional board of review or the commission is adversary in character and one who takes part therein as a representative or agent of a contending party is engaging in the practice of law.

The change of the procedural sections resolved all doubts as to whether one acting in a representative capacity before the agencies of the Industrial Commission for a claimant was, by doing so, engaging in the practice of law. Such conduct embraces in every way the practice of law and therefore, upon the admitted facts in this case, the trial court was vested with jurisdiction to enjoin those not admitted to the practice of law from appearing in adversary proceedings as a representative of a claimant before the

several agencies of the Industrial Commission, when it is exercising quasi judicial powers.

The foundation of government by law had its beginning as a result of the devotion of the great legal scholars and philosophers of days gone by, seeking through the study of law and social relations the key to social progress. Progress in the administration of justice was made by reason of the fact that as a natural result of the work of the legal philosophers, there came into being not only basic rules to guide fundamental legal rights, but also there was developed a "professional class" devoted to maintaining law and order through the judicial process. It cannot be that justice is done in a particular case upon rules conceived of without reference to the law, by a magistrate. A judicial inquiry must be guided by rules of law established through human experience upon which rules, all will be judged alike.

No legal system has ever been long sustained as such without the support of a professional class. Knowledge of the law is a basic need for those participating in a judicial proceeding. The trial of a case or the composition of disputed rights through representatives learned in the law is the process by which the common law was declared and continues to develop. To permit lay representation in a judicial controversy is to set aside what has been gained under government by law and not of men. Human rights cannot be administered by a commercial organization.

In the case of *West Virginia State Bar vs. Earley*, 109 S.E. 2d 420, in considering this question, it is stated:

> "A layman who appears in behalf of claimants for compensation at hearings before the State Compensation Commissioner, an administrative agency or tribunal, and his duly appointed trial examiners and prepares notices of appeal from the rulings of the commissioner to the Workmen's Compensation Appeal Board, is engaged in the practice of law and such conduct consti-

tutes the unauthorized practice of law which may be prevented by injunction.

"The Character of the act, and not the place where it is performed, is the decisive factor in determining whether the act constitutes the practice of law.

"The justification for excluding from the practice of law persons who are not admitted to the bar, and for limiting and restricting such practice to licensed members of the legal profession is not the protection of the members of the bar from competition or the creation of a monopoly for the members of the legal profession, but is instead the protection of the public from being advised and represented in legal matters by unqualified and undisciplined persons over whom the judicial department of the government could exercise slight or no control.

"The judicial department of the government has the inherent power, independent of any statute, to inquire into the conduct of a natural person, a law agency, or a corporation to determine whether he or it is usurping the function of an officer of a court and illegally engaging in the practice of law and to put an end to such unauthorized practice wherever it is found to exist."

The judgment and decree of the trial court is affirmed.

Kovachy, P.J., Hurd, J. concur.

OPINION OF THE SUPREME COURT OF OHIO

Syllabus

IN RE UNAUTHORIZED PRACTICE OF LAW IN CUYAHOGA COUNTY.

IN RE BROWN, WEISS AND WOHL ET AL., RESPONDENT APPELLANTS.

Attorneys at law—Qualifications—Right to practice—Admission to bar by Supreme Court prerequisite—Claims for compensation under workmen's compensation laws—Right to represent claimant or render advice—Persons engaged in practice of law before Industrial Commission—Commission without authority to determine qualifications—Witnesses—Privilege against self-incrimination waived, how—Separation of witnesses—Discretion of court.

1. Section 35, Article II of the Ohio Constitution, does not confer upon the Industrial Commission the authority to determine the qualifications of persons engaged in the practice of law before the Industrial Commission.
2. No person may practice law in this state who has not been admitted to the bar by order of the Supreme Court of Ohio in accordance with its rules and who is not in good standing at the bar.
3. No person, other than an attorney in good standing, may hold himself out as being qualified to render service to those who may have claims for compensation arising under the Workmen's Compensation Laws of Ohio or as being able to render services in the preparation and presentation of such claims nor may such person render such advice or services if a fee for such advice or services is to be received from or charged against the one having such a claim.
4. A party who does not claim his constitutional privilege against self-incrimination when called as upon cross-

examination pursuant to law but voluntarily testifies, although objecting on other grounds, waives his privilege.

5. A trial court does not abuse its discretion with respect to the separation of witnesses, where it excludes a person who is only technically a party because a docket entry adverse to such party has not been journalized and where there is no assurance that such person will not be called as a witness in the proceeding.

(No. 37492—Decided July 10, 1963.)

Opinion, per TAFT, C. J.

APPEAL from the Court of Appeals for Cuyahoga County.

This matter originated with the filing of a petition by a court-appointed committee against Brown, Weiss and Wohl as a partnership and as individuals and against two of the employees of the partnership, alleging that none of them were admitted to practice law in Ohio, and that they are engaged in the practice of law, and praying for an order restraining them from practicing law.

After trial, the Common Pleas Court by its judgment ordered Brown, Weiss and Wohl to cease and desist from doing certain things which they had been doing and which the court found amounted to the practice of law, and they were enjoined from doing certain specified acts.

That judgment was affirmed by the Court of Appeals.

The cause is now before this court on appeal from the judgment of the Court of Appeals and pursuant to allowance of a motion to certify the record.

Mr. Gilbert Weil, Mr. Richard F. Patton, Messrs. Benesh, Friedlander, Mendelson & Caplan and *Mr. Merritt W. Green*, for appellee committee.

Mr. Robert B. Loeb and *Messrs. Sindell, Sindell, Bourne & Markus*, for respondent appellants.

TAFT, C. J. Respondents contend that the courts of this state have no jurisdiction over the subject matter of this case. In doing so, they rely upon Section 35, Article II, Ohio Constitution, which provides in part:

> "For the purpose of providing compensation to workmen and their dependents for death, injuries or occupational disease, occasioned in the course of such workmen's employment, laws may be passed establishing a state fund to be created by compulsory contribution therein by employers, and administered by the state, determining the terms and conditions upon which payment shall be made therefrom. * * * Laws may be passed establishing a board which may be empowered * * * to collect, administer and distribute such fund and to determine all rights of claimants thereto. * * *"

It is argued that the Industrial Commission, having been created by the General Assembly pursuant to this constitutional authority, has exclusive power under existing statutes to determine by rule the qualifications of those who may practice before it and before the Bureau of Workmen's Compensation. However, under Section 1, Article IV, Ohio Constitution, the judicial power of the state is vested in the courts; and this court has indicated that it has inherent power to regulate, control and define the practice of law. *Judd v. City Trust & Savings Bank* (1937), 133 Ohio St. 81, 12 N. E. (2d), 288; *Land Title Abstract & Trust Co. v. Dworken* (1934), 129 Ohio St., 23, 193 N. E., 650. See *State, ex rel. Green, v. Brown, Secy. of State* (1962), 173 Ohio St., 114, 180 N. E. (2d), 157.

Therefore we conclude that Section 35, Article II of the Ohio Constitution, does not confer upon the Industrial Commission the authority to determine the qualifications of persons engaged in the practice of law before the Industrial Commission.

No person may practice law in this state who has not been admitted to the bar by order of the Supreme Court of Ohio in accordance with its rules and who is not in good standing at the bar.

The question remains whether the activities of Brown, Wells and Wohl constituted the practice of law.

Admittedly, no one, other than an attorney, may appear in court as a representative of another, whether or not such representative is to receive a fee for his services. Also, in *Goodman v. Beall et al., Industrial Commission* (1936), 130 Ohio St., 427, 200 N. E., 470, this court held that only an attorney could appear in the former rehearing proceedings before the Industrial Commission, because those proceedings then involved preparation of the record for all subsequent court proceedings with respect to the claim involved. (The court record is not now prepared in any comparable proceedings before the Industrial Commission.) Furthermore, this court has held that the practice of law is not limited to the conduct of cases in court and has indicated that advice to clients and action taken for them in matters connected with the law *may* constitute the practice of law *where a fee is paid for such advice and action. Land Title Abstract & Trust Co. v. Dworken, supra* (129 Ohio St., 23).

However, where an appearance in court or the preparation of papers to be filed in court or the preparation of a court record is not involved, there are relatively few precedents which can serve as a guide in determining what conduct amounts to the practice of law. There is, therefore, a substantial danger that reasons given by this court for its decision in this case may be interpreted as prejudging controversies which may later arise in determining whether other kinds of conduct not in or related to court cases amount to the practice of law. Thus, the briefs filed in this

case on behalf of *amici curiae* emphasize how important it is that this court should avoid broad generalizations in giving its reasons for holding that what the respondents did in the instant case amounted to the practice of law.

The findings of the trial court and the record fully sustain the conclusions that each respondent in the instant case held himself out as being qualified to render advice to those who might have claims for compensation arising under the Workmen's Compensation Laws of Ohio and as being able to render services in the preparation and presentation of such claims, that each respondent did render such advice and such services, and that a fee was to be directly received from or charged against one having such a claim for workmen's compensation for such advice or services with respect to his claim. In our opinion, this conduct would clearly constitute the practice of law even if it only involved advice or services prior to the original decision of the Administrator of the Bureau of Workmen's Compensation. See *Dayton Bar Association v. Herzog* (1962), 173 Ohio St., 313, 181 N. E. (2d), 880; *Cleveland Bar Association v. Fleck* (1961), 172 Ohio St., 467, 178 N. E. (2d), 782. Protecting members of the public from being induced to pay for such advice and services of nonlawyers is just as important as protecting the public from being induced to pay for advice and services of those non-lawyers at later stages in the administrative processing of claims for workmen's compensation.

The findings of fact of the trial court state that respondents "would do all these acts not as a voluntary service but charged a stipulated fee based upon the percentage of compensation awarded, which the claimant received as a result of their efforts." However, the judgment of the trial court enjoins respondents from doing those acts instead of, as it probably should have, merely enjoining them

from doing them for a fee. Cf. *Goodman v. Beall*, *supra* (130 Ohio St., 427). To this extent, that judgment should probably be modified. Also, to the extent that the injunction is against advice and activities, other than advice to and activities for claimants for workmen's compensation, it is probably not supported by the findings and the record, and it should probably be modified accordingly.

Respondents contend also that they were deprived of legal rights when they were required to take the stand and testify as under cross examination about matters which could incriminate them.

There is no indication in the record that any of the individual respondents claimed a privilege against self-incrimination when called to testify as a witness. Objection was made to being called as for cross examination and, in support of that objection, it was stated that there was no right of the committee to call a respondent to the stand as a witness unless such respondent was called as the committee's own witness.

A party who does not claim his constitutional privilege against self-incrimination when called as upon cross examination pursuant to law but voluntarily testifies, although objecting on other grounds, waives his privilege. See *Burke v. State* (1922), 104 Ohio St., 229, 135 N. E., 644.

Respondents contend also that they were deprived of a fair hearing by reason of the exclusion from the courtroom of Ostrovsky, their agent and a party in the same case. At the time when this occurred, no order had been entered on the journal of the trial court as to Ostrovsky although apparently the court had made a docket entry against Ostrovsky at that time. Ostrovsky was then in default of pleading, and a default judgment was subsequently rendered against him.

Even if Ostrovsky had a right to be present in the courtroom throughout the trial because he was still technically a party, that right was his and not the right of the respondents. When Ostrovsky was excluded, on request of the committee for a separation of witnesses, respondents would not or could not exclude the possibility of calling Ostrovsky as a witness for them.

In our opinion, a trial court does not abuse its discretion with respect to the separation of witnesses, where it excludes a person who is only technically a party because a docket entry adverse to such party has not been journalized and where there is no assurance that such person will not be called as a witness in the proceeding.

The judgment is therefore affirmed and the cause is remanded to the Common Pleas Court with instructions to consider any timely application by the respondents that the judgment be modified as hereinbefore suggested.

Judgment affirmed.

MATTHIAS, O'NEILL, GRIFFITH and HERBERT, JJ., concur.

ZIMMERMAN, J., concurs in paragraphs one, two, four and five of the syllabus and in the judgment.

IN THE SUPREME COURT OF OHIO

No. 37942

Appeal from the Court of Appeals of Cuyahoga County

IN THE MATTER OF THE UNAUTHORIZED PRACTICE OF LAW IN CUYAHOGA COUNTY, OHIO

IN RE: Brown, Weiss and Wohl, et al.,
Respondents-Appellants

APPLICATION FOR REHEARING

Application is hereby made by appellants herein, viz., Leslie Brown, Bernard Weiss and Albert Wohl, by their counsel, Alexander H. Martin, Jr., Esq., for rehearing of the instant appeal to the Supreme Court of Ohio, said appeal having been taken as of right and on motion to certify the record.

Such rehearing is requested respectfully for the following reasons:

1. Failure originally in this Court to note the significance of a provision of the Constitution of Ohio, viz., Section 35, Article II of the said Constitution.
2. Failure of the pleading which initiated the proceedings to state a cause of action by reason of its allegations not of facts, but of conclusions of fact and law solely, a denial of due process of law guaranteed to citizens of the United States against action by the State wherein they reside.
3. The judgments herein, and the judgment, rehearing of which in particular, is requested by this application, deny to said appellants the equal protection of the laws as is guaranteed to any person within the juris-

diction of a State by the final cause of Section 1, of the Fourteenth Amendment to the Constitution of the United States.

4. The said judgments below, and the judgment rehearing of which is hereby requested, constitute deprivation, without due process of law, by the State of Ohio of appellants of valuable property, viz., their rights to continue in business.

Wherefore, said appellants, applicants herein, pray by their counsel, as aforesaid, that the former entry herein of July 10, 1963 be vacated and that a rehearing of this matter be granted.

LESLIE BROWN,
BERNARD WEISS,
ALBERT WOHL,
by: ALEXANDER H. MARTIN, JR.,
Attorney for Respondents-Appellants.

THE SUPREME COURT OF THE STATE OF OHIO

September Term, 1963

No. 37942

The State of Ohio,
City of Columbus.

September 25, 1963

IN THE MATTER OF THE UNAUTHORIZED PRACTICE OF LAW IN CUYAHOGA COUNTY: IN RE: BROWN, WEISS & WOHL:

REHEARING

It is ordered by the Court that rehearing in this case is denied.

I, JOHN W. McMILLAN, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry was correctly copied from the records of said Court, to wit, from Journal No. 46 Page 50.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of the Supreme Court this..... day of .....19....

THOMAS L. STARTZMAN, *Clerk.*

CONSTITUTIONAL PROVISIONS AND STATUTES HEREIN INVOLVED

APPENDIX

Constitution of the United States

Article I, Section 10, Clause 1.

"No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque or Reprisal; coin Money; emit Bills of Credit; make any thing but gold and silver coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the obligation of contracts, or grant any Title of Nobility."

Article IV, Section 4.

"The United States shall guarantee to every State in this Union a Republican form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence."

Amendment XIV, Section 1.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Constitution of the State of Ohio

Article I, Section 1.

"Right to freedom and protection of property."

"All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting, and seeking and obtaining happiness and safety."

Article I, Section 16.

"All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay."

Article I, Section 20.

"This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers, not herein delegated, remain with the people."

Article II, Section 35.

"For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such workmen's employment, laws may be passed establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, determining the terms and conditions upon which payment shall be made therefrom. Such compensation shall be in lieu of all other rights to compensation, or damages, for such death, injuries, or occupational disease, and any employer who pays the premium or compensation provided by law, passed in accordance herewith, shall not be liable to respond in damages at common law or by statute for such deaths, injuries or occupational disease. Laws may be passed establishing a board which may be empowered to classify

all occupation, according to their degree of hazard, to fix rates of contribution to such fund according to such classification, and to collect, administer and distribute such fund, and to determine all rights of claimants thereto. Such board shall set aside as a separate fund such proportion of the contributions paid by employers as in its judgment may be necessary, not to exceed one per centum thereof in any year, and so as to equalize, insofar as possible, the burden thereof, to be expended by such board in such manner as may be provided by law for the investigation and prevention of industrial accidents and diseases. Such board shall have full power and authority to hear and determine whether or not an injury, disease or death resulted because of the failure of the employer to comply with any specific requirement for the protection of the lives, health or safety of employes, enacted by the General Assembly or in the form of an order adopted by such board, and its decision shall be final; and for the purpose of such investigations and inquiries it may appoint referees. When it is found, upon hearing, that an injury, disease or death resulted because of such failure by the employer, such amount as shall be found to be just, not greater than fifty nor less than fifteen per centum of the maximum award established by law, shall be added by the board, to the amount of the compensation that may be awarded on account of such injury, disease, or death, and paid in like manner as other awards; and, if such compensation is paid from the state fund, the premium of such employer shall be increased in such amount, covering such period of time as may be fixed, as will recoup the state fund in the amount of such additional award, notwithstanding any and all other provisions in this constitution.

Article IV, Section 4.

"The jurisdiction of the courts of common pleas, and of the judges thereof shall be fixed by law."

Statutes of the State of Ohio

Section 2305.01 of the Revised Code.

"The court of common pleas has original jurisdiction in all civil cases where the sum or matter in dispute exceeds the exclusive original jurisdiction of county courts; and appellate jurisdiction from the decisions of boards of county commissioners, county courts, and other inferior courts in the proper county, in all civil cases, subject to the regulations provided by law . . ." (Second paragraph not pertinent.)

Section 2307.01 of the Revised Code.

"An action is an ordinary proceeding in a court of justice, involving process, pleadings, and ending in a judgment or decree, by which a party prosecutes another for the redress of a legal wrong, enforcement of a legal right, or the punishment of a public offense."

Section 2307.21 of the Revised Code.

"When the question is one of a common or general interest of many persons, or the parties are very numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all."

Section 2323.01 of the Revised Code.

"A judgment is the final determination of the rights of the parties in an action. A direction of a court or judge, made or entered in writing and not included in a judgment is an order."

Section 2727.01 of the Revised Code.

"An injunction is a command to do or refrain from doing a particular act. It may be the final judgment in an action, or be allowed as a provisional remedy. When an injunction is allowed as a provisional remedy it must be by order."

Section 4705.01 of the Revised Code.

"No person shall be permitted to practice as an attorney and counselor at law, or to commence conduct or defend any action or proceeding in which he is not a party concerned, either by using or subscribing his own name, or the names of another person, unless he has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules. Admission to the bar shall entitle such person to practice before any court or administrative tribunal without further qualification or license."

Section 4705.07 of the Revised Code.

"No person who is not regularly licensed to practice law in this state shall hold himself out in any manner as an attorney at law, or shall represent himself either orally or in writing, directly or indirectly, as authorized to practice law.

"The use of 'lawyer', 'attorney at law', 'counsellor at law', 'law', 'law office', or other equivalent words by any person not licensed to practice law, in connection with his own name, or any sign, advertisement, card, letterhead, circular, or other writing, document or design, the evident purpose of which is to induce others to believe such person to be an attorney, constitutes holding out within the meaning of this section."

Section 4705.99(A) of the Revised Code.

"Whoever violates section 4705.07 of the Revised Code shall be fined not more than twenty-five nor more than five hundred dollars."

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In the Supreme Court of the United States

OCTOBER TERM, 1963.

No. 865.

LESLIE BROWN, BERNARD WEISS, ALBERT WOHL,
Individually and as a Partnership,
Petitioners,

vs.

THE UNAUTHORIZED PRACTICE OF LAW COMMITTEE
OF CUYAHOGA COUNTY, OHIO,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION.

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BRIEF OF RESPONDENT IN OPPOSITION.

OPINIONS BELOW.

Except for the opinion of the Supreme Court of Ohio which is reported in 175 Ohio State 149, 192 N. E. (2d) 54, the opinions of the various courts are unreported. They are, however, made a part of the appendix to the petition for a writ of certiorari to which this brief in opposition is directed.

JURISDICTION.

The claim for jurisdiction is set forth in the petition. However, it should be noted that at no time during the trial of this matter, or through the appellate procedure, did the petitioners assert or raise a federal question.

The first attempt to inject a federal question into this proceeding was in the application for rehearing filed in the Supreme Court of Ohio (Petition, p. 65), and then only in the most general language. The order denying the applica-

tion for rehearing (Petition, p. 67) makes it clear that the court did not entertain the application or decide the question, being content to rest its decision on State grounds. The application did not warrant a formal hearing and was denied without briefs or argument.

QUESTION PRESENTED.

Whether the Supreme Court of Ohio has the right to prohibit the performance of legal services for others by persons not licensed by it to engage in the practice of law.

STATEMENT.

On April 3, 1961 the Court of Common Pleas of Cuyahoga County, Ohio appointed a committee consisting of lawyers admitted to the practice of law in Ohio to investigate the unauthorized practice of law in Cuyahoga County. The committee did investigate the activities of the petitioners pursuant to that appointment.

The investigation, and the evidence, revealed that three laymen, a used automobile dealer who was also a furniture store operator and house-to-house canvasser, and a food broker, went into the business of representing claimants for compensation before the Bureau of Workmen's Compensation and the Industrial Commission of Ohio. They began business in 1958.

None of the three, who operated under the partnership name of Brown, Weiss and Wohl, are licensed to practice law.

As their volume of business increased—and it did increase to the point where in 1961 the office had over 600 claims pending and the projected gross income in fees collected on a contingent basis in 1961 neared the $80,000 mark—one or two other laymen were hired to represent

claimants for compensation. One of these left his job in a drugstore to join the business being conducted by the Petitioners. As a part of their operations the partners also hired a Columbus lawyer on a fixed retainer basis who helped the partnership render services for its customers.

The committee appointed by the Court of Common Pleas of Cuyahoga County to investigate the unauthorized practice of law filed the original action to enjoin the activities of these non-lawyers. The services which the committee claimed the partnership performed for its customers were set forth in detail in the application. (Deleted in the petition here but set out at pages 1-6 of Record from Ohio Supreme Court.)

In the answer to the injunction request, the partnership admitted the performance of all of these legal services. However, the partners claimed they were permitted by the Industrial Commission to render such services and further, that the Industrial Commission has exclusive authority to determine who can represent claimants and employers in matters arising under the Workmen's Compensation Law. (Pages 7-11 Ohio Supreme Court Record.)

It is interesting to note that the evidence in the instant case reveals Brown, Weiss and Wohl had forwarded cases to Fleck & Fleck, who were then Attorneys at Law and that when disbarment proceedings were instituted against Fleck & Fleck, Brown, Weiss and Wohl went into business for themselves. This Court is familiar with the *Fleck* case. See *Cleveland Bar Association vs. Fleck*, 172 Ohio State 467. (Certiorari denied, 369 U. S. 861.)

The judgment of the Court of Common Pleas was that services rendered by the partnership for others were legal services saying that:

"the practice of law is not limited to the conduct of

cases in court, but embraces the preparation of forms incident to actions and such proceedings, and the management of those actions and proceedings on behalf of clients and in general all advice and counsel to clients and all action taken by them for clients in matters connected with the law." (Pet. Brief p. 29.)

The Court then enjoined Brown, Weiss and Wohl from further performance of their services for their customers.

The judgment of the Court of Common Pleas was affirmed by the unanimous decision of the Court of Appeals of Cuyahoga County.

The opinion written by Judge Skeel stated:

"The Industrial Commission cannot authorize (by rule) the doing of an act which is contrary to law. It cannot permit or authorize by license a layman, not admitted to the bar, to practice law. The right to discipline lawyers and those unlawfully attempting to practice law is a natural right of the courts and such right cannot be invaded by a non judicial agency or by one which is permitted to exercise limited or quasi judicial power in a limited or restricted field."

The court further noted the decision of *West Virginia State Bar vs. Earley* (1959), 144 W. Va. 504, 109 S. E. 2d 420:

"The justification for excluding from the practice of law persons who are not admitted to the bar and for limiting and restricting such practice to licensed members of the legal profession is not the protection of the members of the bar from competition or the creation of a monopoly for the members of the legal profession, but is instead *the protection of the public from being advised and represented in legal matters by unqualified and undisciplined persons over whom the judicial department of the government could exercise slight or no control.*" (Emphasis added.)

As heretofore noted, throughout the trial and appellate procedures no federal question was asserted by the petitioners. Following the decision of the Supreme Court of Ohio, through new and different counsel, the petitioners filed an application for rehearing in which an attempt was made for the first time to inject a federal question into the case (p. 65, Petition). This application for rehearing was not granted (p. 67).

REASONS FOR DENIAL OF THE WRIT.

The basic question involved in this case is the right of the Supreme Court of the State of Ohio to determine who can or who cannot engage in the practice of law before state courts and state administrative agencies.

(a) Jurisdiction.

At the outset we would assert that the petitioners have failed to meet this Court's jurisdictional requirement of raising substantial federal questions in the state courts. We suggest that the attempt to raise the question for the first time in an application for rehearing, an application not allowed or considered, is not timely. *Radio Station W. O. W. v. Johnson*, 326 U. S. 120, 128; *Hanson v. Denckla*, 357 U. S. 235, 243-4; *Herndon v. Georgia*, 295 U. S. 441, 443; *Healy v. Ratta*, 292 U. S. 263, 270.

It is beyond dispute that the judgment of the Supreme Court of Ohio was based on non-federal grounds and that the non-federal grounds upon which the judgment of the Supreme Court of Ohio was based are adequate to support that judgment.

This being true, even if a federal question had been timely raised, the petitioners would not be entitled to the writ sought. In *Radio Station W. O. W. vs. Johnson, supra,*

the court, at page 129, in addressing itself to the question of jurisdiction, said it was the settled rule:

> "whereby this court will not review a state court decision resting on an adequate and independent non-federal ground even though the state court may have also summoned to its support an erroneous view of federal law."

(b) Practice of Law Within State Control.

We do not ignore the multiplicity of questions set out in the petition simply because of our inability to fathom their meaning and/or their relationship to the jurisdiction of this Court so far as it concerns state court decisions based on state rather than federal law. We do so primarily because all of the questions, in the final analysis, resolve into a single inquiry.

This is whether the courts of a State have the right to determine what services rendered for others constitute the practice of law and the right to determine whether the practice of law before the courts and administrative agencies of the State should be limited to those authorized by the State to engage in the practice of law.

At this late stage the petitioners seem to be saying that because the decision of the Supreme Court of Ohio does not prohibit others rendering similar services in the capacity of salaried employees of employers and/or labor unions they, the petitioners, are denied equal protection of law.

The Ohio court carefully confined its decision to the record before it and purposely avoided generalizations not supported by the record. It looked only to the services rendered by the petitioners and found that these services were the practice of law. On this point the court said (pp. 61-62 Petition):

"There is, therefore, a substantial danger that reasons given by this court for its decision in this case may be interpreted as prejudging controversies which may later arise in determining whether other kinds of conduct not in or related to court cases amount to the practice of law. Thus, the briefs filed in this case on behalf of amici curiae emphasize how important it is that this court should avoid broad generalizations in giving its reasons for holding that what the respondents did in the instant case amounted to the practice of law.

"The findings of the trial court and the record fully sustain the conclusions that each respondent in the instant case held himself out as being qualified to render advice to those who might have claims for compensation arising under the Workmen's Compensation Laws of Ohio and as being able to render services in the preparation and presentation of such claims, that each respondent did render such advice and such services, and that a fee was to be directly received from or charged against one having such a claim for workmen's compensation for such advice or services with respect to his claim."

In Ohio the judicial power is vested in the courts by virtue of Section 1 of Article IV of the Constitution of Ohio. As pointed out in the opinion in this case (Petition, p. 60) the Supreme Court of Ohio has inherent power to regulate, control and define the practice of law.

The control over the practice of law by the various states within their respective jurisdiction has always been recognized by this Court.

"In the exercise of their inherent power, the courts may supervise, regulate and control the practice of law by duly authorized attorneys and prevent the unauthorized practice of law by any person, agency or corporation."

See *People ex rel., Chicago Bar Association vs. Goodman*, 366 Ill. 346, 8 N. E. 2d 941 (*certiorari denied*, 302 U. S. 728, 82 L. Ed. 562, 58 Supreme Court 49); 111 *A. L. R.* 1; *In re Baker*, 8 N. J. 321, 85 A. 2d 505.

Vol. 7 of *American Jurisprudence* 2d, page 44, Section 2, states:

> "the practice of law is so intimately connected with the exercise of judicial power in the administration of justice that the right to define and regulate the practice naturally and logically belongs to the Judicial Department of the *state government*." (Emphasis added.)

The only exceptions to the foregoing rule are those cases where, in the exercise of the authority to control the practice of law, States have invaded rights accorded to individuals under the Federal Constitution or crossed over into area pre-empted by federal law such as in *The Florida Bar v. Sperry*, 373 U. S. 379 (1963). In *Sperry* the Court, speaking through Chief Justice Warren, recognized that in the absence of federal legislation, the States have a substantial interest in regulating the practice of law within the State and could validly prohibit non-lawyers from engaging in the practice of law.

CONCLUSION.

We earnestly suggest that the petition for a writ of certiorari should be denied because:

1. The court's jurisdiction is not properly invoked by reason of the failure of the petitioners to raise substantial federal questions in the Ohio courts.

2. The judgment sought to be reviewed in this Court was based on non-federal grounds which were adequate to support that judgment.

3. In exercising its control over the practice of law in Ohio, the courts of that State did not act in an arbitrary or discriminatory manner.

Respectfully submitted,

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Of Counsel.

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REPLY BRIEF OF PETITIONERS ON PETITION FOR A WRIT OF CERTIORARI

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REPLY BRIEF OF PETITIONERS ON PETITION FOR A WRIT OF CERTIORARI

Respondent's brief herein evokes a reply by brief under favor of Rule 24 (4) of the Revised Rules of the Supreme Court of the United States. Three matters are presented.

I. A Federal Constitutional question not apparent in the record prior to the judgment, review of which is sought is presented in timely manner to the court below by application for rehearing, whether or not considered by that court.

The record presented shows clearly that the decision of the Supreme Court of the State of Ohio (Appendix, pp. 62 and 63) for the first time in its opinion differentiated be-

tween laymen engaged in the representation of others on the basis of the form of the compensation received for the services said to be the practice of law. The third paragraph of the syllabus to the judgment of the Supreme Court of the State of Ohio shows that the said judgment, review of which is sought, affirmed the judgment of the Court of Appeals of Cuyahoga County, Ohio; but in this respect, the matter of fees, i. e., the mode of compensation of petitioners, an entirely new grounds of decision was injected. Viewed in the light of the complete originality of the question of method of compensation presented by the judgment of the Supreme Court of the State of Ohio, the fifth paragraph to the opinion in *Radio State W O W, Inc., et al. v. Johnson*, 326 U. S. 120, 89 L. Ed. 2092, as reported at 65 Supreme Court Reporter, p. 1475, which is cited by the respondent, becomes, by reason of respondent's reliance upon that authority, a confession that certiorari can be granted herein on the question of compensation, provided other considerations are adequately met. *Great Northern Railway Co. v. Sunburst Oil and Refining Co.*, 287 U. S. 358, as reported at 53 S. Ct. 145, held in the sixth paragraph of its syllabus:

> "Rule that constitutional question is urged too late for review by federal Supreme Court if raised for the first time on petition for rehearing below is inapplicable where grounds of original decision below supply new and unexpected basis for claim, by defeated party, of denial of federal right."

II. Jurisdictional defects, of which lack of capacity to sue is one, where incapable of being cured by amendment or by judgment, may be attacked, as it is said, "before trial, at trial, or, for the first time, on appeal." Defects so assailable are not protected by the general rule that a Federal Constitutional question is urged

too late if put forward for the first time upon a petition for rehearing.

In the case at bar the defect of lack of capacity to sue is that a Committee of thirteen lawyers was appointed by the Common Pleas Court to investigate the unauthorized practice of law. (Appendix, p. 30) After investigation, the committee concluded that the representation of claimants before agencies created by the Ohio Workmen's Compensation Law has constituted the practice of law from the beginnings of the Ohio Compensation system; that engagement in that business activity, when it is by persons not admitted to the practice of law constitutes the unauthorized practice of law. The thirteen lawyers, a committee, initiated a disciplinary proceeding against three laymen, petitioners before the Supreme Court of the United States. But they sought an injunction, which can only be had in Ohio in a civil action. Section 2727.01 of the Revised Code. The thirteen did not have, as a Committee, capacity to sue, nor did they have as individuals, except if action had been brought in a representative capacity for lawyers in general, or for claimants in general. But this was not done. There is no cure by judgment, for injunction is not a single judgment, once performed, concluded. Injunction is continuous in its operation and effect.

Lack of capacity to sue constitutes a bar to maintenance of an action. It could not have been cured by mere amendment. It was not cured by the judgment herein, and it is available to the petitioners herein now, for the first time on appeal, i. e. petition for a writ of certiorari. Lack of capacity to sue, by rendering the judgment thereby so defectively taken that it is a nullity, opens the way to attack by a direct proceeding, and authorizes and permits the Supreme Court of the United States to exercise its certiorari

jurisdiction herein, provided that the questions sought to be considered are questions raised by and within the Constitution of the United States.

III. The judgment sought to be reviewed cannot be considered to rest upon an adequate nonfederal ground, unless the nonfederal ground is independent of the denial of the Federal Constitutional right claimed and shown, particularly where the nonfederal ground claimed violates equally the state's constitutional insistence upon the equal protection of the laws.

In *Lynch v. New York*, 293 U. S. 52, 55 S. Ct. 16, 79 L. Ed. 191, Mr. Chief Justice Hughes stated the rule under consideration so well that it is repeated by Mr. Justice Frankfurter in his opinion in *Radio Station W O W, Inc. v. Johnson*, 326 U. S. 120, 129, 65 S. Ct. 1475, 1480, on which the respondent here relies. That statement is:

> "Where the judgment of the state court rests on two grounds, one involving a federal question and the other not, *or if it does not appear upon which of two grounds the judgment was based*, and the ground independent of a federal question is sufficient in itself to sustain it, this Court will not take jurisdiction."
>
> *Lynch v. New York*, 293 U. S. 52, 54, 55.
>
> (Italicized portion was omitted by Mr. Justice Frankfurter in his opinion in *W O W, Inc. v. Johnson, supra.*)

As Mr. Justice Frankfurter's opinion makes abundantly clear, the nonfederal ground claimed to be sufficient must, indeed, be so. In the judgment sought to be reviewed, respondent contends that "control over the practice of law by the various states" is the nonfederal ground. The words respondent would uphold are:

> "3. No person, other than an attorney in good standing, may hold himself out as being qualified to render service to those who may have claims for compensation arising under the Workmen's Compensation Laws of

Ohio or as being able to render services in the preparation and presentation of such claims nor may such person render such advice or services if a fee for such advice or services is to be received from or charged against the one having such claim." (Appendix, p. 58)

There is no ambiguity, no nonfederal ground separate from that which does violence to the American concept the equal protection of the laws. Representation of claimants before agencies created by the Workmen's Compensation Laws of the State of Ohio, if for fees paid by claimants upon a contingent basis, has been made the practice of law, unauthorized if done by persons not admitted to the practice of law, while the same acts, if done without compensation, or for compensation otherwise than by payment of contingent fees, as by salaried persons although not admitted to the practice of law, or by persons, although not admitted to the practice of law, who may represent employers, do not fall within the ban of being the unauthorized practice of law.

Moreover the adequate nonfederal ground violates equally the state's insistence, by its constitutional provision, Article II, Section 26 of the Constitution of the State of Ohio, upon the equal protection of the laws. Said provision is:

"All laws of a general nature shall have a uniform operation throughout the state; * * *"

In *Beachwood v. Board of Elections*, 167 O. S. 369, 372, 5 O. O. 2d 6, 148 N. E. 2d 921, it is said,

"This court has held many times that, to comply with this section, legislation need not affect every person in the state but that a reasonable classification may be made, and it is sufficient if the legislation operates equally upon every person and locality within such classification."

Thus "uniform operation" and "equal protection of the laws" impose the same standard. That which is claimed to be an adequate nonfederal ground violates both standards set, respectively, by the Constitution of the State of Ohio and the Constitution of the United States.

The prayer for the allowance of the writ of certiorari is renewed.

Respectfully submitted,

ALEXANDER H. MARTIN, JR.,
Attorney for Petitioners.

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MIDWEST LAW PRINTERS AND PUBLISHERS, INC., Columbus 15, Ohio

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Petitioners,

vs.

THE UNAUTHORIZED PRACTICE OF LAW COMMITTEE OF CUYAHOGA COUNTY, OHIO,

Respondents.

PETITION FOR REHEARING AFTER DENIAL OF CERTIORARI

Petitioners respectfully pray for a rehearing and for reversal of the order heretofore entered herein on the 6th day of April, 1964 denying their petition for writ of certiorari to the Supreme Court of Ohio, upon the following grounds:

THE PROCEEDINGS BELOW

June 29, 1962 in a disciplinary proceeding in the Court of Common Pleas, cause number 722,206, Cuyahoga County and State of Ohio, judgment was entered against the said petitioners whereby they, individually and as a partnership, were enjoined from engaging in the representation of claimants before certain administrative agencies, viz. the Industrial Commission of Ohio and related, subservient agencies, and said petitioners were ordered to pay the costs of said proceedings. Said judgment is unreported.

November 10, 1962, in an unreported opinion, the Court of Appeals of Ohio for the Eighth Judicial District (Cuyahoga County) affirmed the judgment and decree of the trial court.

July 10, 1963 in an opinion reported at 175 O.S. 149, 192 N.E. 2d 54, the Supreme Court of the State of Ohio affirmed the judgment of the said Court of Appeals. Application for rehearing was duly filed on July 24, 1963, and was denied by order, unreported, of the Supreme Court of the State of Ohio on September 25, 1963.

On December 19, 1963, an order was made and entered in the Supreme Court of the United States by which the time within which to file a petition for a writ of certiorari in this cause was extended to and including January 30, 1964. On January 29, 1964, an order was made and entered in the Supreme Court of the United States whereby the time within which to file a petition for a writ of certiorari in this cause was further extended to and including February 21, 1964. Petition for writ of certiorari was filed herein on the 21st day of February, 1964. Respondent's Brief in Opposition was duly filed, and petitioners' Reply Brief was filed herein within the time allowed therefor.

The petition for rehearing after denial of certiorari is made under favor of jurisdiction conferred upon the Supreme Court of the United States by Section 1257 (3) of Title 28 of the United States Code and by Rule 58 (2) of the Revised Rules of the Supreme Court of the United States to review by writ of certiorari to the Supreme Court of the State of Ohio said judgment of July 10, 1963 and said order of September 25, 1963. Order permitting petition for rehearing after denial of certiorari to be filed herein was made and entered on April 8, 1964 by Associate Justice Potter Stewart upon application duly made therefor within the time limited.

GROUNDS UPON WHICH PETITION FOR REHEARING IS BASED

Both the petition for writ of certiorari and the petition for rehearing have invoked the jurisdiction of the Supreme Court of the United States conferred by Section 1257 (3) of Title 28 of the United States Code, and, more narrowly, said Section's final clause,

> "* * * where any title, right, privilege or immunity is specially set up or claimed under the Constitution, of the United States."

Fortunately respondent is required, on petition for writ of certiorari, to present a brief in opposition. The respondent's brief in opposition is most illuminating, and it has placed before the Supreme Court of the United States in the case at bar the crux of the situation, viz., that the State may regulate the practice of law. But the question of definition of the practice of law yet remains. Petitioners on petition for writ of certiorari could not, and did not, suggest to the Supreme Court of the United States that the validity of the determinations below that the representation of claimants before agencies created by the Workmen's Compensation Laws of the State of Ohio be reviewed. But petitioners suggest and urge that the defense, or grounds of opposition to the grant of certiorari, made by respondent as stated at page 6 of the Brief of Respondent in Opposition,

> "We do not ignore the multiplicity of questions set out in the petition simply because of our inability to fathom their meaning and or their relationship to the jurisdiction of this Court so far as it concerns state court decisions based on state rather than federal law. We do so primarily because all of the questions, in the final analysis, resolve into a single inquiry.
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> "This is whether the courts of a State have *the right to determine what services rendered for others constitute the practice of law and the right to determine whether the practice of law before the courts and ad-*

> *administrative agencies of the State*, should be limited to "those authorized by the State to engage in the practice of law." (emphasis added)

be required to define that which is the practice of law according to the requirements of the law of the State of Ohio in this instance. The portion emphasized above has been so emphasized to show how the respondent has committed the error of logic of jumping to the conclusion. According to respondent's words of counsel's choice, the single inquiry is whether the courts of the State have the right to determine what services rendered for others constitute the practice of law. This right the courts of the State assuredly have, and nowhere can it be considered that petitioners have contended that the courts of the State do not have this right, this power, this authority, provided the courts make a determination according to the law of the State and within limitations imposed by the Constitution of the State of Ohio and by the Constitution of the United States. Petitioners do contend that in the judgment, review of which is sought, the courts of the State of Ohio, in the case at bar, have not determined that the representation of claimants before the administrative agencies created by the Workmen's Compensation Laws of the State of Ohio constitutes the practice of law, and the record is devoid of a showing of consideration given to such inquiry. Rather, and we come to the balance of the emphasized portion of the quotation immediately hereinabove, respondent has jumped to the conclusion that such representation is the practice of law. The single inquiry suddenly doubles. The single inquiry becomes also whether the courts of the State have the right to limit the practice of law before agencies and the courts of the State. It is readily conceded that the courts of the State may limit, and certainly must limit, the practice of law to those authorized thereunto. But the question re-

mains of whether the representation of claimants before administrative agencies in Workmen's Compensation matters constitutes the practice of law. In all proceedings heretofore, this question, the crux of the entire controversy, has been untouched by analysis and has been incorrectly resolved by having been leaped over. Petitioners respectfully suggest and urge that this cause should be remanded to the courts of the State for resolution of the issue according to the laws of the State and the Constitution of the State of Ohio and of the United States.

The judgment, review of which was sought by petition for writ of certiorari, denied, and review of which is sought anew by the instant petition for rehearing, is deficient in the following respects:

1. Said judgment assumes to discipline, as it members of the legal profession, persons *sui generis* and admittedly not of that profession.

Since respondent is a Court's Committee, acting for the Court (appendix to the petition for writ of certiorari herein, p. 31), this was certainly action by the State of Ohio in violation of the right of petitioners to engage in their accustomed line of endeavor. *U. S. v. Cruikshank*, 92 U. S. 542, 23 L. Ed. 588. This contention was advanced in the petition for writ of certiorari, and is deemed properly renewed for the reason that the defensive posture, based upon the adequate state ground theory of decision, cannot be maintained nor sustained where the claimed adequate state ground violates, as in the case at bar, Article I, Section 1, of the Constitution of the State of Ohio. (Appendix to petition for writ of certiorari, page 69.)

Said judgment is further deficient:

2. Said judgment offends against Article II, Section 28, of the Constitution of the State of Ohio, for it is made to act retrospectively.

The pertinent part of said Constitutional provision is,

> "The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; * * *"

Reference is made again to the manifest denial to petitioners of their Federal Constitutional right conferred by Article I, Section 10, clause 1, of the Constitution of the United States. The claim, petitioners again assert, and it is deemed advisedly done and within the limitations imposed by said Rule 38 (2), that the judgment review of which is sought rests upon an adequate state ground cannot be maintained, nor upheld, where the judgment also, and at the same time, offends against a provision of the Constitution of the State of Ohio.

Particular reference may be made appropriately herein to misconceptions expressed by the Supreme Court of the State of Ohio as to the significance of the Workmen's Compensation Amendment to the Constitution of the State of Ohio. It has been asserted by respondent throughout the entire proceedings herein that petitioners were engaged in the business of advising claimants as to their legal rights. This seems to require definition of legal rights. The rights of claimants, in view of Article II, Section 35, of the Constitution of the State of Ohio, petitioners respectfully submit, are not legal rights in the sense that such rights are those enforceable by a remedy at law, but they are rights to participate in

> "a state fund * * * created by compulsory contribution thereto by employers, and administered by the state * * *"

There is a clear distinction between rights to a fund, not enforceable in any proceeding at law by enforcement of a legal remedy, and rights at law, or in equity, in which members of the legal profession are trained. The members of

the legal profession, it is respectfully submitted, are trained to bring to fruition those rights which are enforceable at law or in equity. They are not specially trained to evaluate, or to enforce, rights to a particular fund.

Section 4123.519 of the Revised Code of the State of Ohio shows in several respects that a claim for compensation does not become an adversary proceeding until it has proceeded to the point at which an appeal to the Court of Common Pleas of the State of Ohio may be had. At such point the claim as to questions of its validity, becomes one to be prosecuted according to law and according to rights under the law, and at that stage, the question of amount of, or extent of compensation, remains an entirely administrative matter.

SUMMARY AND CONCLUSION

The Brief in Opposition herein states that the judgment review of which is sought rests upon adequate state grounds. Petitioners submit that refuge cannot be taken in the concept of adequate state grounds, where the judgment is manifestly contrary to the laws of the State, and to the Constitution of the State in respects which are entirely the same as those which have been established by the petition for writ of certiorari herein, and by the petition for rehearing herein, as violative of limitations imposed by the Constitution of the United States.

It is respectfully urged therefore that the petition for rehearing be granted.

Respectfully submitted,

ALEXANDER H. MARTIN, JR.
Attorney for Petitioners

Dated: April 29, 1964

CERTIFICATE OF COUNSEL

I hereby certify that the above petition for rehearing is presented in good faith and not for delay and that said petition is restricted to the grounds above specified.

ALEXANDER H. MARTIN, JR.
Attorney for Petitioner.

Dated: April 29, 1964

CERTIFICATE OF SERVICE

I, Alexander H. Martin, Jr., Esq., Attorney for the Petitioners herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 30th day of April, 1964, I served copies of the foregoing Petition for Rehearing after Denial of Certiorari upon the Unauthorized Practice of Law Committee of Cuyahoga County, Ohio, the respondent herein, by mailing copies thereof in duly addressed envelopes, with first class postage prepaid, to respondent's attorneys of record, as follows:

To: Merritt W. Green, Esq.
400 Security Building
Toledo, Ohio

To: Alan M. Wolk, Esq.
941 Society National Bank Building
Cleveland, Ohio 44114

To: Gilbert Weil
300 Leader Building
Cleveland, Ohio 44114

ALEXANDER H. MARTIN, JR., Esq.
Attorney for Petitioners
507 Lawyers Building, Cleveland, Ohio 44113

APPENDIX

4123.519 Appeal to court of common pleas.

The claimant or the employer may appeal a decision of the industrial commission in any injury case, other than a decision as to the extent of disability, to the court of common pleas of the county in which the injury was inflicted or in which the contract of employment was made if the injury occurred outside the state. Like appeal may be taken from a decision of a regional board from which the commission has refused to permit an appeal to the commission provided, that the claimant may take an appeal from a decision of the administrator on application for reconsideration or from a decision of a regional board. Notice of such appeal shall be filed by the appellant with the commission and the court of common pleas within sixty days after the date of the receipt of the decision appealed from or the date of receipt of the order of the commission refusing to permit an appeal from a regional board of review. Such filings shall be the only act required to perfect the appeal and vest jurisdiction in the court.

Notice of appeal shall state the names of the claimant and the employer, the number of the claim, the date of the decision appealed from, and the fact that the appellant appeals therefrom.

The administrator of the bureau of workers' compensation, the claimant, and the employer shall be parties to such appeal and the commission shall be made a party if it makes application therefor.

The attorney general or one or more of his assistants or special counsel designated by him shall represent the administrator and the commission. In the event the attorney general or his designated assistants or special counsel are absent, the administrator or the commission shall select one or more of the attorneys in the employ of

the administrator or the commission as his or its attorney in such appeal. Any attorney so employed shall continue his representation during the entire period of the appeal and in all hearings thereof except where such continued representation becomes impractical.

Upon receipt of notice of appeal the commission shall cause notice to be given to all parties who are appellees.

The claimant shall, within thirty days after the filing of the notice of appeal, file a petition setting forth the basis for the jurisdiction of the court over the action and setting forth the issues. Further pleadings shall be had in accordance with the rules of civil procedure, provided, that service of summons on such petition shall not be required. The clerk of the court shall, upon receipt thereof, transmit by certified mail a copy thereof to each party named in the notice of appeal other than the claimant. Any party may file with the clerk prior to the trial of the action a deposition of any physician taken in accordance with the provisions of the Revised Code, which deposition may be read in the trial of the action even though such physician is a resident of or subject to service in the county in which the trial is had. The cost of the deposition filed in court and of copies of such deposition for each party shall be paid for by the industrial commission from the surplus fund and the costs thereof charged against the unsuccessful party if the claimant's right to participate or continue to participate is finally sustained or established in such appeal. In the event such a deposition is taken and filed, the physician whose deposition is taken shall not be required to respond to any subpoena issued in the trial of the action. The court, or the jury under the instructions of the court, if a jury is demanded, shall determine the right of the claimant to participate or to continue to participate in the fund upon the evidence adduced at the hearing of such action.

The court shall certify its decision to the commission and such certificate shall be entered in the records of the court and appeal from such judgment shall be governed by the law applicable to the appeal of civil actions.

The cost of any legal proceedings authorized by this section, including an attorney's fee to the claimant's attorney to be fixed by the trial judge in the event the claimant's right to participate or to continue to participate in the fund is established upon the final determination of an appeal, shall be taxed against the employer or the industrial commission if the industrial commission or the administrator rather than the employer contested the right of the claimant to participate in the fund. Such attorney's fee shall not exceed twenty per cent of an award up to three thousand dollars and ten percent of all amounts in excess thereof, but in no event shall such fee exceed seven hundred and fifty dollars.

If the finding of the court or the verdict of the jury is in favor of the claimant's right to participate in the fund, the commission and the administrator shall thereafter proceed in the matter of the claim as if such judgment were the decision of the commission, subject to the power of modification provided by section 4123.52 of the Revised Code.

An appeal from a decision of the commission in which an award of compensation has been made shall not stay the payment of compensation under such award or payment of compensation for subsequent periods of total disability during the pendency of the appeal. In the event payments are made to a claimant which should not have been made under the decision of the appellate court, the amount thereof shall be charged to the surplus fund under division (B) of section 4123.34 of the Revised Code. In the event the employer is a state risk, such amount shall not be charged to the employer's experience. In the event the